No. 315

Office - Supreme Court, U.S.
FILED
JUL 26 1957
JOHN T. FEY, Clerk

No. 13,046

In the United States Court of Appeals for the Sixth Circuit

Civil Action No. 1555

JOHN KASPER, APPELLANT

v.

D. J. BRITTAIN, JR., J. M. BURKHART, W. B. LEWALLEN, SIDNEY DAVIS and WALTER E. FISCHER, APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

APPENDIX FOR APPELLEES

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[1-2] APPEARANCES:

For Petitioners (D. J. Brittain, Jr., et al.): Walter E. Fischer, Esq., Leo Grant, Esq., W. B. Lowallen, Esq., Sidney Davis, Esq., Of Counsel.

For Respondents (Frederick John Kasper, et al.): J. Benjamin Simmons, Esq., Roy N. Stansberry, Esq., Herman Parker, Esq., Of Counsel, John C. Crawford, Jr., Esq., United States District Attorney, Amicus Curiae.

This cause came on to be heard before the Honorable Robert L. Taylor, Judge, United States District Court for the Eastern District of Tennessee, Northern Division, without intervention of a jury, on August 30, 31, September 6, 1956, when the following proceedings were had, to-wit:

THE COURT: Any further motions?

MR. SIMMONS: May it please the Court, in the case before the Court today entitled Joheather McSwain, et al, vs. the County Board of Education of Anderson County, Tennessee, et al, Civil Action No. 1555, I am Mr. Simmons, who represents one of the respondents, John Kasper.

[3] A few minutes ago, if the Court please, the respondent, John Kasper, was served with an order of attachment. I have had occasion, here in the last few intervening moments to scan the order of attachment, and it has certain allegations in there of an evidential nature. I feel if the Court please, in view of that fact, I could not adequately represent this respondent if he was placed on trial at this time.

THE COURT: He will not be placed on trial at this time. I will agree with you on that on the contempt proceeding.

MR. SIMMONS: May it please the Court, I would like to have the entire matter go over until tomorrow at this time, if we may, in view of this development.

THE COURT: No, not on the injunction. This injunction requires immediate action. But on the trial of Mr. Kasper, yes, you will be given sufficient time to prepare your answer, if you desire, and time to prepare your defense, when it is reached. I will assure you of that, and I will give your adversary time, for Mr. Kasper and others to

show cause why this temporary restraining order should not be continued in force as a preliminary injunction. They will be heard because of the magnitude of the matters involved.

It has come to the attention of the Court that those peo-[4] ple, in the face of this order, have been marching in front of that school, and this Court is going into that; and going into that now, to find out if this order has been disobeyed, and is going to find out what should be done about it if it has been disobeyed.

Mr. SIMMONS: If your Honor please, I am only asking 24 hours' continuance.

The COURT: And I am granting that on the attachment proceeding, Mr. Simmons, but I am not passing the preliminary injunction hearing. It must be heard.

Mr. SIMMONS: Your Honor, then, is declining to defer the action on the temporary restraining order, but your Honor is taking under advisement, and your Honor will consider our request for a continuance until tomorrow on the order of attachment?

The COURT: You are right, or even until a later date on the attachment.

Mr. SIMMONS: I might say, your Honor, I feel that the issues are so interrelated that a trial of one necessarily involves trial of the other, and that it is a duplicate function for this Court to proceed to hear one when we will later be called upon to present evidence which will be entirely [5] overlapping on these issues.

The COURT: Mr. Simmons, the Court will not try the injunction phase of the lawsuit on its merits at this time; the Court will just make inquiry to find out whether a prima-facie case is made out on the question of issuing the preliminary injunction. That which the Court does here today will not be any more than either to dismiss the temporary restraining order or continue it in effect as a preliminary injunction not later than a ten-day period, at which time I will hear all parties on the merits of the lawsuit; that is to say, whether the preliminary injunction, if any is issued, shall or shall not be made permanent. I

will not try any phase of the case today on the merits, no, sir. You are entitled to time, and you shall have time to present your case.

Mr. SIMMONS: Thank you, your Honor.

May I ask the Court if any testimony will be taken at all today?

The COURT: Yes, sir. Either side may introduce testimony on the charges made in this petition that was filed before me yesterday, and on which I issued a temporary restraining order at 6:07 p. m. I will hear proof as to whether or not that order was improperly granted or, if not improperly granted, whether it served its purpose and should [6] be dismissed or whether the circumstances require that it be kept in force as a preliminary injunction, not later than ten days from now.

In the meantime, I will hear you gentlemen, and set the matter on the merits within that period. As you know, under the statute, these preliminary injunctions only last, unless the parties agree, for ten days. That is the reason it will have to be set, as I see it, on the merits within that period.

Do I make myself clear?

Mr. SIMMONS: Yes, your Honor. Thank you very much.

The COURT: Any other motions, gentlemen?

Mr. SIMMONS: No, your Honor.

Mr. DAVIS: No, your Honor.

The COURT: Mr. Clerk, will you call the case?

The CLERK: Joheather McSwain, et al, vs. County Board of Education of Anderson County, Tennessee, et al, Civil Action No. 1555, Mr. Fischer, Mr. Grant, Mr. Lewallen, Mr. Davis, for the petitioners; Mr. J. Benjamin Simmons, of Washington, D. C., Mr. Roy N. Stansberry, and Mr. Herman Parker, for the respondents; Mr Jolin C. Crawford, Jr., United States District Attorney, Amicus Curiae.

[8] J. M. BURKHARDT, called as a witness by and in behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. DAVIS:

Q. State your full name, please.
A. J. M. Burkhardt.
Q. Where do you live, Mr. Burkhardt?
A. 322 Maple Street, Clinton, Tennessee.
Q. Do you occupy an official position in Anderson County?
A. Yes, sir.
Q. What is that position?
A. Member of the County School Board.
Q. How long have you been a member of the Anderson County School Board?
A. Oh, approximately 16 years.
Q. I believe you were one of the original parties to this main lawsuit?
A. Yes, sir, I was.
[9] Q. And you are still at this time a member of the Anderson County Board of Education?
A. Yes, sir, I am.

By Mr. DAVIS:

Q. It is your understanding that as a member of the Anderson County School Board you are under the orders of the District Court to integrate the Clinton High School in Anderson County?
A. Yes, sir, I am.
Q. As a member of the School Board, have you and other members done that?
A. Yes, sir, we have.
Q. Recently, did you take any particular action to that effect?
A. Yes, sir.
It was not entirely clear in some of their minds whether

they had to formally adopt a resolution as to the Board complying with the order. I believe on last Thursday [10] night we met and passed such a resolution.

Q. That was the Anderson County School Board that met?

A. The Anderson School Board, more or less instructing the Clinton High School principal to carry out the Court order.

Q. Who was the principal at the Clinton High School?

A. D. J. Brittain.

Q. He was instructed by the Board to integrate the high school according to the orders of this Court?

A. Yes, sir.

Mr. Simmons: Your Honor, we can stipulate all they [11] are trying to bring out, that he is a member of the Board of Education and in that official capacity he is under the order of this Court.

The Court: That ought to be sufficient.

By Mr. Davis:

Q. Do you know this respondent, John Kasper?

A. I have seen him by that name, yes, sir. I never met the gentleman.

Q. Where did you see him?

A. I saw him in the Trial Justice's Court.

Q. When was that?

A. Monday morning, I believe.

Q. Did you see any demonstrations at the high school on Monday or Tuesday or Wednesday morning of this week?

A. I did on both mornings.

Q. On——.

A. Monday and Tuesday.

Q. Would you describe to the Court what those demonstrations were?

A. Well, milling around, principally. In fact, the demonstrations were scattered pretty well over town and back

to the school and around the school, parading, and automobiles blowing their horns.

Q. Did you see any pickets or signs or placards?

[12] A. Yes, sir. I saw them carrying them around the school, along the street by the school, and up through town.

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[13] D. J. BRITTAIN, JR., called as a witness by and on behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. DAVIS:

Q. State your name, please.

A. D. J. Brittain, Jr.

Q. Will you speak just a little louder?

A. I have laryngitis. That is just about as loud as I can talk.

Q. Do you occupy a position in the school system of Anderson County?

A. I do. I am principal of Clinton High School.

Mr. SIMMONS: I didn't hear that.

The COURT: Principal of Clinton High School.

By Mr. DAVIS:

Q. How long have you occupied that position?

By the WITNESS:

A. I am sorry, but I have laryngitis.

Q. How long have you occupied that position?

A. I have been principal of Clinton High School for 12 years.

The COURT: Mr. Simmons, if you have trouble hearing, you may come up closer.

[14] Mr. Marshall, will you move a chair up closer for Mr. Simmons?

The WITNESS: I am sorry, but I just can't do any better.
The COURT: Mr. Simmons, do you want to get closer?
Mr. SIMMONS: I think it would be better.
Mr. DAVIS: I will repeat the question.

By Mr. DAVIS:

Q. How long have you been principal of the Clinton High School?

By the WITNESS:

A. Twelve years.

Q. You are an original party defendant to the original suit filed in this case?

A. Yes, sir. That is correct.

Q. I believe in that lawsuit you were ordered to integrate the Clinton High School?

A. I was.

Q. Did you take steps to do that?

A. I did.

Q. According to that order, you were to integrate beginning with the fall term?

A. That is correct.

Q. What steps were taken to comply with that [15] order?

A. We enrolled Negro students at the same time we enrolled white students in our school.

We had discussed this matter prior in our faculty as to the best way to do it, realizing that we had no other alternative except to disobey your Honor or one other alternative, which has been either for me to resign my job, the other alternative which has been offered to me, but I feel that any man who holds this job is in the same position. It doesn't matter whether it is me or somebody else.

We also had discussions in school for the purpose of indoctrination, allowing both sides to discuss the question, the purpose being that we knew we had to face this problem, and when we did we could face it as intelligently as we could.

Q. Mr. Brittain; how many students were enrolled this year in September and August?

The WITNESS: You mean, in the entire school?

Mr. DAVIS: Yes, sir.

A. 806 students were enrolled in the high school this year.

Q. How many colored students enrolled?

A. We had 15 colored students. There were three of them that had never been in school, so we actually had 12.

[16] Q. Where were those students enrolled?

A. They were enrolled at the same time we enrolled our white students.

Q. What was the date?

A. (Continuing) —which is in May of the last school year.

Q. Was there an additional enrollment, then, or some other formal enrollment or registration taken in August?

A. Yes, sir. I can't remember the date. It was a week ago Monday. All other students had the right to come in and be registered on that day.

Q. Prior to that time, had there ever been any disturbance about these colored students enrolling?

A. Well, there had certainly been disagreement of opinion, but as far as physical disturbance, there had not been any physical disturbance.

Q. Had there been any pickets at the high school?

A. There had not been any pickets at the high school.

Q. Had there been any act of violence of any nature?

A. Not to my knowledge.

Q. Mr. Brittain, when did that school open?

A. School opened on the 20th day of August, this year. That was registration date. We had a week of in-service

[17] training; then on the present Monday students started attending classes.

Q. That was on —?

A. The 27th, I believe.

Q. Monday of this week?

A. Yes, Monday the 27th.

[18] By Mr. DAVIS:

Q. Mr. Brittain, I will ask you what occurred on Monday morning of this week when school opened for classes?

By the WITNESS:

A. Monday morning of this week——

Mr. SIMMONS: I believe, if the Court please, your ruling was that whatever occurred that relates to these respondents is material and relevant. The Court would be interested in knowing that, but what other people did, or persons who are not before this Court, is irrelevant and moot, and time should not be spent on it.

The COURT: Unless that was done at the instigation of some of these respondents, or all of them. I will hear the proof subject to the objection of counsel. I will hear you.

Mr. DAVIS: He may answer, I take it, your Honor?

The COURT: He may answer.

By the WITNESS:

[19] A. Well, of course, we opened the school. We had a number of new students to enroll, approximately 27, your Honor, which raised the enrollment to 727 students.

There were pickets outside of the building. We operated the full day of school inside that building. We were not molested inside of the building.

By Mr. DAVIS:

Q. I would like to have you describe the situation outside of the building with respect to the numbers of people congregating.

Mr. SIMMONS: I object to the question, your Honor, unless it can be shown that the respondent participated.

The COURT: The objection will be sustained unless the respondents are connected with it.

Go ahead. You may testify.

The WITNESS: I am of the opinion, your Honor——

MR. SIMMONS: No. I object to that.

The WITNESS: I will take back, "I am of the opinion", your Honor.

I will say that as soon as Mr. Kasper was released from the Court—I will not say "As soon", because I don't know at what hour, but I will say in the Monday morning hours of the 27th, Mr. Kasper was on our campus talking [20] to students, along with other people involved in this lawsuit.

By Mr. DAVIS:

Q. Did you have a conversation with the defendant, John Kasper?

By the WITNESS:

A. I did not on Monday. I did have a conversation with Mr. Kasper and a group of people on Tuesday. I believe that is correct.

Q. Where did this conversation take place?

A. Took place right in front of the school door.

I came out voluntarily to talk to Mr. Kasper and his crowd. They had sent a representative in—I believe an officer of the law—who said that they wanted to talk to me. I willingly came out and talked to Mr. Kasper and all of the people that were out there.

Q. About what time of the day was that, if you remember?

A. It was in the morning, I believe.

Q. Will you estimate as to how many people were there with Mr. Kasper at that time?

The WITNESS: Your Honor, do you want me to estimate?

The COURT: Yes, sir, your best opinion.

By the WITNESS:

[21] A. I would estimate there were 25 to 30 adult people. I would estimate, in addition to that, there were 30 or 40 students.

By Mr. Davis:

Q. Would you tell the conversation that took place there——

A. Yes.

Q. (Continuing).—between you and the defendant?

A. As much as I can remember, or I will be glad to answer specific questions, either way.

I was asked what my position was on this integration. I told them that I had only three things I could do. I could obey the order of this Court or I could disobey the order of this Court and be subject to any of its results, or I could resign my job. I told him, further, that I did not believe it made any difference what man was in that job, that he would still be faced with the court order and the same decisions.

I will get down to the meat of it. There are several people here who were at that meeting and heard it.

Mr. Kasper told me that many influential people were not concerned with the laws in this case, and he wanted one of two things out of me. He wanted me to run the Negroes out of school or he wanted me to resign my job. I [22] told him I would not resign my job under intimidation—I hope you will come back to that—but I did tell Mr. Kasper—I said, "Look at this big crowd here."

He says, "You can see that the citizens of Clinton don't want you as principal of this school," and I told him that if he could present me with a petition showing 51 per cent of my students and 51 per cent of my parents didn't want me, I would resign that day.

There were other things, other discussions. There were hard words that were thrown around, but that is the main one.

Now, specifically, if you want to get into anything——

Q. Remaining on this day, which was last Tuesday. How long did that group of people remain at the high school?

A. As far as I know, they all remained while I was outside there. I talked to each and every person. I gave every person an opportunity to express his fears. I told those people, many of them that had children in the school

that I operate, and some of them still have children in the school, and I told these people that I hoped when this all got settled down that we would still have their children in our school, that it was not a personal matter between me and between them and that I had no authority to disobey the order of this Honorable Court.

[23] Q. Outside of the conversation that you had with Kasper and the members of the group there, were there any other incidents which you observed happen on Tuesday?

Mr. SIMMONS: I object, your Honor, unless he ties it in with this respondent.

The COURT: The same ruling.

Mr. DAVIS: I will ask this question:

By Mr. DAVIS:

Q. How long did the defendant remain on the scene?

By the WITNESS:

A. That, I cannot tell you. When they got through, I went in the building, and I can't say.

I will say this: Until today, we have had pickets and people all over the school grounds. They have come up and stood in the front door, and they have even got in the building, and I have asked them to leave and in some cases I have had to call the officers in to ask them to leave.

Q. Did you see the signs that were carried by the pickets there?

A. Yes, sir.

Mr. SIMMONS: I will object, your Honor, to this testimony. It is very disparaging unless they tie it in definitely with the respondent. It should be excluded, and even the [24] testimony that is in the record should be ordered stricken.

The COURT: The same ruling. Go ahead.

By the WITNESS:

A. Yes, sir, I saw signs.

By Mr. Davis:

Q. What was written or printed on them?

A. Let's take one individual thing.

There were some students out on the sidewalks carrying signs. One was a boy by the name of John Carter. He is not a member of our student body.

I also saw a car from Alabama. On it was painted, "Let's get the Negroes out of C. H. S.". There were other signs, because as I left school that afternoon there was plenty of evidence on the school grounds, your Honor, that those signs were there.

[26] Q. Mr. Brittain, could you tell the Court what occurred on Wednesday morning, yesterday?

A. In reference to what? I have been through so much in this last three days, I have been swallowed up by everybody, it seems like, newspaper men, delegations, and if you will be specific—there are so many things that happened to me this morning.

Q. Did you see any acts of violence?

A. Yes, sir, I did.

Q. Would you tell us, if you remember, when it was; [27] what day?

Mr. Simmons: I object, your Honor, unless he can tie in the respondent with such alleged acts of violence.

The Court: Same ruling.

The Witness: I am not going to attempt to mention anything I have heard, your Honor; only what I have seen myself.

The Court: All right.

Mr. Simmons: Your Honor, I think he ought to be instructed one step further: what he has seen in which the respondent participated.

The Court: You may state what you have seen in which the respondent allegedly participated, or in which he did not, but unless that which you have seen would connect it with the respondent, it will not be considered by the Court.

By Mr. Davis:

Q. Proceed.

By the WITNESS:

A. On Tuesday during our lunch hour I was in the office, along with four newspaper reporters who had come and wanted information. Some of them may be in this courtroom now.

I looked out my window. I saw this big delegation of [28] people coming down the sidewalk towards the school. In the front of this group there were some Negro boys, one of whom I enrolled in my high school. Some of the others were also enrolled, at least two others. Behind these boys was a great group of people. I will specify that by estimating, your Honor—that is all I can do—maybe 50 to 75 people marching along behind these boys.

The reporters all came over to the window when they saw it. They thought it was a Negro delegation at first because Negroes were in front of these boys.

When they got in front of Doctor Bishop's office, there was a fight. Fortunately, the police were right across the street from where this occurred. They rushed across the street and seized the boys who were apparently involved in the fight, a Negro boy and a white boy. I understand that the Negro boy will testify. Of course, I wouldn't attempt from my distance to say what happened, except there was a fight, with considerable commotion.

These boys were taken to the city jail, the Negro boy and the white boy, and a large delegation gathered right around the doors of the jail.

The sheriff of Anderson County came over to my office. I want to make this point very clear, your Honor. He told me——

[29] Mr. SIMMONS: I will object to that, your Honor.

The COURT: Sustained.

The WITNESS: This involved me, your Honor, very deeply, in that I have been accused of being the person who sent those Negro students home Tuesday afternoon, when it was the law enforcement officers——

Mr. SIMMONS: I object to that, your Honor.

The WITNESS: Now, wait a minute.

He told me this, your Honor. He told me this.

Mr. SIMMONS: That is not related to the respondent.

By Mr. DAVIS:

Q. Did Kasper make any statement to you about that, defendant Kasper?

The WITNESS: About what?

Q. About what you are going to relate?

By the WITNESS:

A. In the group—I want to say this about Mr. Kasper: In our discussions, he in no way was willing to recognize any legal authority. He told me, he said, "You are the man", and some of the people in this group—and he was the leader. He was right there. He told me directly, he said, "If you keep this up, there is going to be [30] bloodshed."

I pointed my finger in the group, and I said, "I hope the rest of you people heard this threat."

The person who made it then denied it had been made, but I heard it very clearly.

Q. Did Mr. Kasper say anything to you about what authority he did recognize?

A. I believe Mr. Kasper said——

Mr. SIMMONS: I object to what he believes, your Honor.

The WITNESS: I will say what Mr. Kasper said.

Mr. Kasper—I want to be sure of this—he told me that important men in this country had evaded this type of a thing, and that I could do it if I wanted to. I told him that we had fought this case through your courts, and that I was under the impression that I had no choice in the matter except to get out.

Mr. DAVIS: That is all.

[41] HORACE B. WELLS, called as a witness by and in behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. DAVIS:

Q. State your name.

A. My name is Horace B. Wells.

Q. What is your occupation?

A. I am editor and publisher of the Clinton Courier News.

Q. Do you know the defendant John Kasper?

A. I met him Sunday.

Q. This past Sunday?

A. Yes, sir.

Q. Where and what time did you meet him?

A. I met Mr. Kasper at my office at 3 o'clock on Sunday afternoon.

Q. Who else was there at that time?

A. At that time, W. E. Lewallen, our police commissioner—chairman of the police committee, Frank Hobbs, [42] and Mr. Roy Purkey, were present at that time, and also with him was a man named Mr. Till.

Q. Did you have a conversation with Mr. Kasper at that time?

A. The whole crowd of us had a conversation with him, yes, sir.

Mr. DAVIS: Let me ask you this question:

Q. Did you have any previous information about Mr. Kasper, without saying what the information was?

Mr. SIMMONS: I will object to that, your Honor; hearsay.

The COURT: Sustained.

By Mr. DAVIS:

Q. Just tell the Court what conversation you had with Mr. Kasper.

By the WITNESS:

A. I told Mr. Kasper when we went in that we understood he was in town, and that the crowd would like to discuss with him the problem that faced the citizens of the community, in the hope that maybe he would understand what we were up against. We told him that the people of Clinton and Anderson County were opposed to integration.

Q. Let me ask you, Mr. Wells: What did he tell you he proposed to do?

A. He told us that he was there to organize a picket line [43] around Clinton High School to oppose the integration at the high school.

Q. Did he say who sent him?

A. I asked who sent him. He said no one sent him, that he had read about it in the paper and had come of his own accord, that his life had been dedicated to opposing the further spread of integration.

Q. Was anything said to him about the legal status of segregation in the Clinton High School, or integration?

A. Yes. We told him that was the purpose of our desire to meet with him. We had to inform him, since he was newly arrived, that the Clinton school was being integrated on a Federal Court order and that the people of Anderson County had fought for five years against it, that we had lost, but that we believed in the law, and that we believed that our government was founded upon law and that the schools were being opened according to law, and we urged him not to create any trouble.

By Mr. DAVIS:

Q. What did he tell you he proposed to do?

By the WITNESS:

[44] A. We asked him what he proposed to do, and he said that he planned to form picket lines around the school to discourage children from attending. We asked him how he hoped to gain anything by that other than to cause confusion and trouble. He said that in a place in Delaware and a place in Maryland that he had been successful through

his efforts in one place in preventing integration of a school, and in another place that the school system was closed down through his efforts.

Q. Did the defendant make any comment about the Federal Court order?

Mr. Simmons: Your Honor, that is a leading question, again.

The Court: Overruled. If he did, the Court wants to hear it, what he said.

By the Witness:

A. In our discussion we had pointed out to him that we were acting under a Federal Court order specifically directed to Clinton, and asked him if in any of these other instances there was a Federal Court order. He said that there was in one of the instances.

We talked for an hour, so we covered a great deal of ground.

We pointed out to the defendant that we believed in law enforcement. He said that there was a higher authority [45] than the courts. He said that the people, under common law, that the will of a majority of people was superior to any court, and that if enough people opposed anything that the opinions of the courts could be changed, and it was on this theory that he was operating, that the will of a majority of the people was superior to any court ruling and that it was not necessary that the people obey that court ruling.

Q. Did he tell how the majority of the will of the people would be shown?

A. No.

Q. In that conversation was any literature shown that the defendant had there or that came from the defendant?

A. He had a leaflet that was handed out. His name was signed to it. I asked him about that. I said, "How can you explain"—He assured us that everything would be peaceful.

He said, "We don't want any trouble. We are peaceful."

I said, "How can you be peaceful when the very material that you distribute has the words in it 'We are not an attack program. We must fight. You must fight with us.'"

I said, "Those are not peaceable words."

Q. Mr. Wells, will you introduce that circular there as Exhibit 1 to your testimony?

[46] Mr. SIMMONS: What is it?

The COURT: Let counsel see it. You may see it, Mr. Simmons.

Mr. SIMMONS: I am going to object to the admission into evidence, unless it can be shown that the defendant, or one of the respondents, personally is connected with it.

The COURT: The objection will be sustained, and it will be stricken from the record unless one or more of the respondents is connected with it.

By Mr. DAVIS:

Q. Did Mr. Kasper acknowledge that as his literature?

By the WITNESS:

A. I didn't ask him if it was his literature. His name was on it. We discussed it, and he discussed it as if it were his. I didn't ask him the specific question if it was his.

Q. What did he say about it?

A. He said that—we didn't really argue about it; we discussed it.

I said, "How can you explain, if you are on a peaceable mission, that the words of this circular you are distributing are fighting words?"

[47] He said that they had no intention of causing any trouble.

Q. Did he ever deny that he was distributing that literature?

A. No, sir.

Q. Were there circulars like that in circulation in and about Clinton?

A. There were many of those in circulation about Clinton.

Q. Did you see Mr. Kasper after that meeting on Sunday afternoon?

A. Yes, sir.

Q. Where did you see him the next time?

A. Well; after that meeting I went on down to the jail. He was talking over the telephone. After that I saw him—I did not see him again until Tuesday morning at the preliminary hearing on the charges following his arrest and in my office on Sunday afternoon.

Q. After that time did you see him anywhere?

A. I have seen him on a number of occasions around the school and around the courthouse.

Q. Clinton High School?

A. Clinton High School, yes, sir.

Q. What would he be doing on those occasions when you saw him around the Clinton High School?

A. One time I have seen him there just being there with [48] a crowd of people, standing around talking.

Q. Do you know of any meetings held at the courthouse on Tuesday or Wednesday evening?

A. Yes, sir. There was a mass meeting held—after the trial on the preliminary hearing, he announced in the hall there would be a mass meeting that evening, and there was a meeting and some several hundred—maybe 500 people—attended the meeting on Tuesday, then last night I did not go down there, but I could hear them from my office. There was an even larger crowd present last night, which some estimated as high as a thousand people.

Q. Were you there on Tuesday evening?

A. No, sir.

Mr. Davis: All right. You may ask him.

CROSS-EXAMINATION.

By Mr. Simmons:

[50] Q. Had you observed a group there picketing the school?

A. Yes, sir.

Q. Approximately, how many were picketing the school?

A. On Monday morning, while Mr. Kasper was in jail, there were groups that varied from two to eight carrying signs. There were probably—oh, 25 or 30 youngsters, and maybe about that many older people.

Tuesday there were a few more people there, but not too many more.

Wednesday all day long there were rather large groups, and after the meeting Tuesday night there were very large groups.

The police officers and the deputies had received instructions to keep them all off the school grounds and keep them back away from the school property. There were hundreds of people there all during the school hours from the time school opened until after school closed. They were there and all over town. They were driving around in [51] cars with signs on the cars, honking their horns and disturbing everybody in town. They ran in and out of the drug store, chasing colored people around town, starting at the school. They were just swarming over the town. They had the whole town upset and in a tremendous furmoil.

Q. How many people, approximately, were participating in it during the time most of the people were participating?

A. It is difficult to say when you have such a movement of people around, but I would say there were around 200 people—between 150 and 200 people. Many of them on Tuesday were young people.

Q. There was picketing going on while Mr. Kasper was in jail; is that correct?

A. Yes, sir.

[52] Q. During Monday, Tuesday, and Wednesday, what efforts did you observe there by the police department in maintaining order?

A. Clinton is a small town, and the police there, many of them, are older men, have not been trained to handle large crowds, but they had done a very good job of trying

to keep people away from the school grounds, trying to [53] avoid violence, trying to maintain order. It has been a very difficult problem, sir.

Q. Are you positive, Mr. Wells, that you reported Mr. Kasper correctly on his remarks concerning this Court and the Supreme Court?

A. I did not tell you what he said about the Supreme Court. Would you like to hear what he said about the Supreme Court?

Mr. SIMMONS: No. I am not interested in that.

Q. What did he say to you concerning this Court? I want you to quote him correctly.

A. He did not mention this Court specifically, but he mentioned this Court's order. He said that——

Q. This Court what?

A. He did not mention the judge, but he mentioned the order of this Court. We didn't discuss the judge; we discussed this Court's order issued on January 4th. He said that the people did not have to obey the order, that they did not have to obey the court order, the Supreme Court ruling, that the people were superior to the courts and that the people, under common law—he started quoting law. He said that under English common law that the people are superior to the courts and it is not necessary that they obey [54] these orders.

Q. Did he tell you that a democracy is run by a majority of the people, will of the people; did he use that expression?

A. No, he didn't use that expression. No, sir.

Q. Do you deny that is an incorrect statement of what he told you?

A. I would say that in discussing—we discussed this thing for an hour and ten minutes, as I remember. I looked at my watch there. He could have said that. I won't deny it. In an hour and ten minutes, with four or five people discussing something, it is quite possible.

Q. It could have been the gist of what he said, couldn't it?

A. No, sir. The gist of what he said was that the Supreme Court was influenced by aliens and one of the members was a communist, and even the Supreme Court's ruling, as far as he was concerned, was of no value.

Q. He told you that a member of the United States Supreme Court was a communist?

A. Yes, sir. I asked him the specific name of the member. He said "Justice Frankfurter".

Q. You are positive about that?

A. Yes, sir, I am positive. I took an oath to tell the truth, and that is the truth.

[55] Q. Did you challenge him on that statement?

A. I did not challenge him on that statement. I just turned my back, when he said that, in disgust.

Q. At the time you have observed Mr. Kasper during the period of Monday, Tuesday, and Wednesday, have you seen him on each of those days?

A. I did not see him Monday. He was in jail Monday. I didn't go down there. Tuesday, I was at the hearing, and Tuesday afternoon I saw him in the hall. I talked to him. I was with him then. On Tuesday afternoon he went down to the high school. He was there, and he formed a little parade and came back down. I saw him there. I did not see him any more until after lunch. He went to lunch. I didn't see him any more then.

On Wednesday, I saw him at the high school grounds. I did not see him any more, because I had other things to do. I did not leave the office except in the morning.

Q. On the only occasion when you saw Mr. Kasper, was he demeaning himself in a peaceful law-abiding manner?

A. Mr. Kasper was with those groups that I mentioned earlier. He, himself, was just standing around.

Q. Your answer to my question is that he was demeaning himself in a peaceful law-abiding manner on all occasions?

[56] A. Yes, sir.

Mr. Simmons: No further questions.

Mr. Davis: Mr. Wells, I would like to ask one more question.

REDIRECT EXAMINATION.

By Mr. DAVIS:

Q. Did Mr. Kasper tell you when he came to Clinton?
A. We discussed that, and he said that he came in on Saturday, and he spent the night in his car along the side of the road. I do not know what time he came in Saturday.

RECROSS-EXAMINATION.

By Mr. SIMMONS:

Q. Did he tell you why he came to Clinton?
A. Yes, sir. We asked why he came to Clinton. He said that he read in the newspaper about the movement to integrate the school and that he came to do what he could to prevent integration of the school.
Q. Did he tell you why he came other than that?
A. He told me that—he mentioned that he had dedicated his life fighting the spread of integration.
[57] Q. Did he mention communism?
A. He could have. The only mention of communism I heard was in this connection, that the Supreme Court—was in connection with the Supreme Court.
Q. Did he tell you he was fighting communism?
A. No, sir, he didn't say he was fighting communism.

Mr. SIMMONS: That is all.

(Witness excused.)

LEO GRANT, JR., called as a witness by and in behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. LEWALLEN:

Q. State your name, please, to the Court.
A. Leo Grant, Jr.
Q. What is your profession, Mr. Grant?
A. I am an attorney-at-law.

Q. Practicing at the Tennessee Bar?

A. Yes, sir.

Q. Mr. Grant, are you a resident of Anderson County, Tennessee?

1581 A. Yes, I am.

Q. Have you had occasion within the last two or three days to be in and around Clinton, Tennessee?

A. Yes, I have.

Q. Your office, I believe, is located at Oak Ridge, Tennessee?

A. Yes, about six miles from Clinton. Clinton is the county seat, the site of our court. I go to Clinton almost daily.

Q. I will ask you, Mr. Grant, if in the company of the assistant attorney general, Mr. Fischer, myself, and Mr. Sidney Davis, here, you accompanied us or were in front of the high school when we had a conversation with Mr. Kasper, over here?

A. Yes, I did. On the morning of Wednesday, August 29th, in company with Mr. Fischer, Assistant Attorney General, and Mr. Sidney Davis, a local attorney, and yourself, I did have a protracted conversation with Mr. Kasper.

Q. Now, just tell His Honor where that conversation took place.

A. The conversation took place in front of the Clinton High School, approximately 50 yards from the front door. There was an automobile parked that had a placard on it—two placards. Mr. Kasper's position was a few yards to the left of this automobile.

1582 One placard said, "Old Man Lewallen, the nigger lover."

The other placard said, "Get Borden, the nigger-lover. Keep the Africans out of Clinton High School."

Mr. Kasper was in the center of a group which, as I stood on the steps of the high school—I was there to observe, specifically observe this scene. I counted the individuals surrounding Mr. Kasper.

Q. What was your count, Mr. Grant, on that occasion?

A. 163 people. That did not count the pickets.

I moved down the sidewalk and accosted about a dozen of the pickets, who were children—not any teenagers; children. I went to those that had the most inflammatory signs. I asked their names. About half of them told me their names, and the other half told me what they thought of me.

I then went over to the group around Mr. Kasper. When I arrived, a very heated discussion was taking place between yourself, Mr. Davis, Mr. Fischer, and Mr. Kasper.

Q. Could you relate the substance of that conversation there between we three and the defendant Kasper?

A. Yes, I can.

I had some difficulty pushing my way through the crowd. [60] They were extremely hostile. They kept poking signs in my face, and they kept crying, "Nigger lover", pulling at my coat, demanding to know who I was. I finally got up directly to the rear of Mr. Fischer. I was standing approximately two feet, I would say, from Mr. Kasper.

When I arrived, being a lawyer, I was very interested to hear what Mr. Kasper had to say. He was propounding a doctrine to the effect that the court could say what they wished, but the will of the people was supreme.

After he had finished this, he maintained this was the basis of the English common law.

He was then asked by you, Mr. Lewallen, "What is your purpose here, Mr. Kasper?"

At this point, I took a pencil and a piece of paper out of my pocket that I had been taking the names on, and started jotting notes down on all of this.

Q. What was Mr. Kasper's answer to the question?

A. "I am here to keep the Negroes out of this school."

At this point, Mr. Lewallen volunteered to represent Mr. Kasper free of charge as an attorney if he, Mr. Kasper, could tell him any legal means this could be done. Mr. Kaspor said he could not, but he knew a means of keeping Negroes out of the school.

Q. What was that means, Mr. Grant?

[61] A. He said that he was going to use the will of the people, and he voiced—looking now at me, he said that

I could be a hero to the community if I would join this group.

While all of this was going on, the four of us were being jostled about, obscene phrases were being used, people kept poking signs in our face. Mr. Kasper stood in the middle. He was the leader. He was the one that was looked at. Every time he would make a point, the crowd would indicate their approval of this. One woman, in particular, was standing directly next to Mr. Kasper, and whenever she would scream an insulting and provocative remark, Mr. Kasper would turn and smile at her.

In the meantime, he was keeping up a running commentary to the effect that this court order didn't have to be obeyed, because it was not obeyed in Delaware, and the reason it was not obeyed in Delaware was that there was —I believe the words were, "Social pressure". At this point, the gentleman right there with the dark hair——

Q. Who is that gentleman: do you identify him as Mr. Leo Bolton?

A. Yes, it is. At the time, I didn't know his name. I got out there to the edge of the crowd and found out.

Mr. Bolton kept interrupting with statements like, "Let's go in and pull those Negroes out and let the Indians loose [62] on the reservation. Put the Indians back in."

Mr. Davis was holding a very animated conversation with a gentleman I had seen around the courthouse before.

Q. Who do you identify him as?

A. In the yellow shirt. I believe I used to know him as a constable or a candidate for constable—Hankins.

Q. Hankins is one of the defendants here?

A. Yes. He was advocating that the solution of the problem was simply that we move into the schoolhouse and pull the Negro children out.

Q. Mr. Grant, while this conversation was taking place there between we attorneys and Mr. Kasper, what was the general tenor of the crowd concerning Mr. Kasper?

A. It wasn't a crowd; it was in the nature of a mob. Mr. Kasper was the leader. When he asked for silence or indicated silence, they shut up. When we attempted to speak or make a point, his followers continually inter-

rupted. Whenever he spoke, he spoke in very low tones, a very low voice, and gestured for silence, which he could get.

Any of his remarks concerning the Supreme Court, concerning defiance of this Court's order, concerning the fact that Mr. Brittain was a weak sister and should be [63] replaced, the Negroes would be kept out of this school, whenever these remarks were made, his followers would jiggle their signs up and down.

On the outskirts of the crowd there were 15 or 16—oh, I would say between 17 and 18-year olds, and they had sticks that were pieces of—oh, I guess one by two lumber that had been broken off, and every time Mr. Fischer or myself would score a point with Mr. Kasper in our discussion, these pimply-faced youngsters would start to strike their clubs against their legs and gesture with them, hit them in the palms of their hands, and each time we turned around and gave them a hard look they would quail, but as Mr. Kasper's discussion grew more animated, they would draw up close, and finally it was—well, we were only provoking the situation further, and finally we withdrew. I asked Mr. Kasper before I left if he was going to hold an organization meeting. He said, "Yes". I asked what time. He said, "7:30".

We made our way through the throng. At that time I took several names down, many names of school children, and I took Mr. Bolton's name. I took Mr. Hankins' name. I asked Mr. Kasper his full name, asked if he had a middle initial, to make absolutely certain I was spelling it correctly, and I took the name down of a woman who was abusive. She was silenced with a remark or two.

Mr. LEWALLEN: Let me ask you a question,

[64] Q. During the conference between the attorneys and Mr. Kasper, did you hear the remark or remarks concerning the orders of this Court and the Supreme Court of the United States?

A. Yes, sir.

Q. What were those remarks?

A. He was asked directly by you, and you were telling

him the case as nearly as you could give it and the date. You said, "The United States District Court". You spoke as a lawyer would to fix the case firmly in mind. You told him of the order and asked him what he was advocating that these people do in regard to that order.

At this point I took my pencil and put it down. His answer was, "We will disregard that. The will of these people is superior to it."

Then he went into a tirade——

Q. Did you hear him say any more concerning the Supreme Court or the members thereof?

A. Yes. He stated that the members of the Supreme Court—at least one of them—was a member of the communist conspiracy.

Q. Which one was that; did he identify him by name?

A. Yes, sir. Justice Frankfurter.

Q. Justice Frankfurter?

[65] A. Yes. He also said that Justice Black was incompetent to hold his position. He stated that all of the Court "lacked judicial experience and legal training," and he gave us a disseriation——

Q. Do you remember any conversation concerning one of the members of the Court having been a municipal judge?

A. Yes. He said Justice Black had been a municipal judge for 18 months in Birmingham and that he had been relieved from his post by his incompetency, and only the communist conspiracy had succeeded in promoting Justice Black to his present high office, and that order that we were operating under was an example of this conspiracy, this communist conspiracy.

All of this, of course, was deliberate with many side remarks about English common law and the will of the people, resistance, and so forth.

Mr. LEWALLEN: You may ask him.

CROSS-EXAMINATION:

[66] Q. What did you hear Mr. Lewallen quote to Mr. Kasper there?

A. I heard him tell Mr. Kasper that this order issued by Judge Taylor in January—that he, Mr. Lewallen, had been the attorney for Anderson County and attempted to prevent integration, and he said, "That order provides that we must integrate the high schools in this county," and then he went on to say, "Now, in the face of that order, what do you want us to do?"—"What do you want these people to do?" I believe he said.

[67] Mr. Kasper's statement—he was just speaking in a very low, smooth voice; not agitated. He said, "That order can be disregarded. It has been disregarded in similar orders in Delaware and by the use of picket lines and student strikes, I have succeeded in keeping Delaware segregated."

He went on to say that we, talking to the four of us, could be heroes in our community if we advised the principal and faculty to disregard that same order, and this would keep us segregated.

As I say, I was, very frankly, in this crowd for the sole and exclusive purpose of collecting evidence as to what he was doing. I was taking notes at the time.

Q. By whom were you employed?

A. By no one. I came up to Clinton on Wednesday morning to meet an attorney concerning a lawsuit that we had in Lake City. This attorney—Mr. Lewallen's wife is a school teacher at the school.

I arrived and found him very much perturbed. He said, "My wife is teaching at the school up there, and there is a mob."

So we got in the car, and about that time we arrived at the school. Mr. Davis' wife is also a school teacher.

[68] Then Mr. Fischer pulled up. I went in the building with them, and the scene in there was one that—these people were close friends of mine, and their wives. I know them. Outside you could see a mob. As we drove up the calls and cries—Mr. Brittain was in a high state of nervous tension.

The four of us said, "We have got to do something about this." Mr. Fischer had explained to us that the police

couldn't stop it. We had no city ordinance against a parade. The police force was a little too overwhelmed, so the four of us decided we would do something, and it was decided that since I was not known to the majority of them, that I would do the name-taking. I didn't expect to find them in it, but the first thing I knew, I turned around and Mr. Lewallen and Mr. Fischer and the others had moved to the center of the crowd and were conferring with Mr. Kasper, so I immediately got over there, expecting trouble. There was no—outside of being shoved or pushed, there was no violence. In fact, I think the four of us were perfectly safe. The police were across the street.

Q. You were not afraid while you were there in this position, were you, Mr. Grant?

A. Let me say this: whether I was afraid or not, I would have been in that crowd.

Q. Did anybody threaten you with violence?

[69] A. Yes.

Q. Who; one of the respondents in this case?

A. Well, the black-haired—the gentleman with coal black hair behind you, Leo Bolton.

His statement—I don't know how you would consider it or construe, "We are going to get those Negroes and nigger lovers." What construction you would put on that, I don't know.

Mr. Simmons: Mr. Grant, you realize that is not an answer to my question.

Q. I asked if anybody there threatened you with violence?

A. I would say that they made remarks that could be construed as threats, yes. "Get them. We will run them off. Chase them out. Run them back to where they came from. Send them back to their nigger friends." Things of that type.

Q. Were they referring to you?

A. Yes, sir, they most certainly were. They were hanging on my arms.

Q. Did they know you were from Oak Ridge?

A. Two or three of them did, yes. As I say, that is why I just took notes. I didn't say anything. I figured it wasn't my town and I would just keep quite. We have integration in Oak Ridge.

[70] Q. Are you a lawyer in private practice in Oak Ridge?

A. Yes, I am.

Q. Now, Mr. Kasper said, "This country is a law of the majority." That is the substance of what he told you?

A. No, I wouldn't say that is the substance. He said—he would preface his remarks with statements, "This country is governed by the will of the majority of the people." Then he went on——

Q. Do you find any fault with that?

Mr. LEWALLEN: Your Honor, we object to the interruption of counsel. We would like to have the witness be allowed to finish his answer.

Mr. SIMMONS: I am sorry. I thought he had finished.

By the WITNESS:

A. (Continuing)—He said, "The country is governed by the majority of the rule of the people." He then went on to say this law was superior to any court, to any congress, to any legislature, to any law enforcement.

Mr. Lewallen then asked him, "If the law along this road says 25 miles an hour and your group feels they can drive 30," what is your feeling?

He refused to answer. He was then asked, "There are 60,000 people in Anderson County. You have a couple of [71] hundred here. This is the will?" He again evaded it.

Then he started with—he answered all of the questions with, "The English common law holds that the will of the people is supreme to courts, laws, congresses," and that his group was expressing the will of the people and that they could disregard and not obey the orders of the court because of this common law, English common law, and this catechism, repeated with variations, was in substance his answer to any question.

By Mr. SIMMONS:

Q. At any time did you observe any violence on Monday, Tuesday, or Wednesday?

A. Yes, sir, I did. When I——

Q. Before you answer that further, did you see any of the respondents here connected with that violence?

A. Well, in front of the school there was a large gathering of people——

Q. I said "violence"; not congregation; violence. You know what I mean by "violence".

A. I most certainly do.

In this group, as their acknowledged leader, was Mr. Kasper. Some city block from Mr. Kasper's position—and this following extended along the block—I witnessed—we were passing at the red light and looked down it, this [172a] attack that Mr. Brittain spoke of. Now, understand me. Mr. Kasper was a half a city block from it. Mr. Lewallen and I stopped at a red light above it, and that would be his only connection with violence, his personal connection.

The next another instance, in front of the little ice cream stand around the corner. We were in front of the school in Mr. Lewallen's car. We saw boys break off from the group around Mr. Kasper, three or four, with clubs. They ran down a back alley.

I thought Mr. Lewallen's wife was in an automobile. I saw a red-headed woman in a car with the same markings. I hurriedly told Buford to get down there. We arrived. It was not his wife. The white boys came up with sticks and stones and saw us. They had seen us around the school, and they returned. The fracas didn't develop.

As far as seeing Mr. Kasper strike anyone or throw anything, no, I did not.

Q. Then you saw no violence?

A. Your definition of "violence", sir, is what I question.

[72] REDIRECT EXAMINATION.

By Mr. LEWALLEN:

Q. Mr. Grant, you say on Wednesday morning when you went to the Clinton High School in company with Mr. Fischer, Mr. Davis, and myself there was a considerable group of people around Mr. Kasper and others there in front of the school?

A. Yes, sir.

Q. In the block there?

A. Yes, sir.

Mr. LEWALLEN: I want to ask you this question, Mr. Grant:

Q. Were you inside of the school building, also?

A. Yes, sir.

Q. Did you observe conditions in the school?

A. Yes, I did.

Q. Do you know whether there was a feeling of unrest [73] among the people there?

A. There was a feeling of fear and anxiety and tension. Those people were afraid.

Mr. LEWALLEN: I want to ask you this question:

Q. What was the condition around the school on Wednesday morning; was it such as would and did cause a disrupting influence in the Clinton High School when you were there in company with Mr. Fischer, Mr. Davis, and myself?

A. Yes, sir.

While I was there, it was necessary to call a special assembly of all the students as a result of this condition outside.

[85] The COURT: The Court overrules that motion.

Do you have any proof to offer?

Mr. SIMMONS: Yes. Take the stand, Mr. Kasper, please.

FREDERICK JOHN KASPER, one of the respondents herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. SIMMONS:

Q. Mr. Kasper, please state your full name.

A. Frederick John Kasper.

Q. What is your official capacity, Mr. Kasper, speaking businesswise?

A. I am executive secretary of the Seaboard White Citi-
[86] zens Council, sir.

Q. What is the Seaboard White Citizens Council? Tell the Court, briefly, what the Council consists of.

A. It is a council dedicated to the preservation of constitutional government, constitutional rights, state's rights, segregation.

Q. When did you go to Clinton, Tennessee, Mr. Kasper?

A. I came to Clinton, Tennessee, on Saturday at 1 p. m., last Saturday.

Q. What was your mission when you went to Clinton, Tennessee?

A. My purpose was to carry out the agreed plan to find out what could be done in the face of the impending integration here beginning in Clinton, Tennessee, for the first time.

Q. Pursuant to what authority did you go to Clinton, Tennessee?

A. I went pursuant to the authority of the Seaboard White Citizens Council.

Q. Is the Seaboard White Citizens Council affiliated with other citizens' councils?

A. Yes, sir, it is.

Q. Was there any action taken by other citizens' councils corresponding to the action taken by the Seaboard
[87] White Citizens Council?

A. Yes, sir, there has been.

Q. Tell us whether or not during the past three or four

days at Clinton, Tennessee, other representatives of white citizens' councils have been there?

A. Yes, sir, they have been.

[94] Q. Mr. Kasper, did you have a conversation there with the principal of the Clinton High School? You heard his testimony on that, did you?

A. Yes, sir, I did.

Q. Were there other gentlemen that accompanied you?

A. Yes, sir.

Q. About how many?

A. I would say close to 300. I may be wrong.

Q. Approximately 300, in your estimation?

A. Yes.

Q. What was the mission of that group?

A. They enjoined upon me to serve as their spokesman to ask Mr. Brittain his position in this entire conflict there at the school concerning integration of the Negroes into the school system at Clinton, and they asked me—they expressed to me, I should say, that they felt that Mr. Brittain being in a position, direct position, to do so, could not [95] grant that relief, some kind of immediate relief from the tension that has never before existed in this community, by calling a meeting of the school board of Anderson County to discuss ways and means to build high school facilities for the Negro students in the county, whether it were an extension to be added to the grammar school now existing at Clinton or a building, an outside unit high school, located at Clinton or elsewhere in the county, and that the Negroes should be removed from the school at the earliest time, and an appeal made perhaps to this Court. I was told by some of those gentlemen that would be my job, but I said that these East Tennesseans, lawyers who have been familiar with this entire procedure, it would be their job to petition this Court for injunction relief, perhaps, or whatever relief—we have talked about injunction here—but in the face of this tension there at Clinton with the students attending high school, some available church,

or go to Knoxville, as formerly, by bus, until that school could be constructed for them.

The people who were with me expressed belief that if Mr. Brittain showed unwillingness to act or try and bring some relief—merely let the situation deteriorate, that he might resign his position and another man from the school board, or by different means of referendum systems in the county, could take the position Mr. Brittain seemed un-
[96] willing to take for the white people.

Q. Did that group of some 300 odd people, did they authorize you to make any demand regarding his resignation?

A. Yes, they did.

[97] Q. When you were released from jail, when did you next come in contact with the Clinton High School building; when were you next there?

A. Approximately an hour later.

[98] Q. Were there pickets there at the time you arrived or not?

A. There were a few students who had picket signs with them, yes. I went to the building—I went to the high school building at the request of the students who had been in the courtroom, some hundred of students who asked that I come down there with them. There were others out there at the time.

Q. How many people have milled around the school? You heard testimony that they were milling around the school at various times Tuesday and Wednesday?

A. Yes, sir.

Q. What is your estimate of the crowd?

A. I think it ran from 50 to 400 at different times.

Q. During that occasion, was there any evidence of any violence, that you observed?

A. Yesterday afternoon I was down by the high school and a number of students began to run up toward the courthouse, and there was some sort of disturbance. I did not actually see it.

Q. That is all you know about that?

A. Yes, sir.

[99] Q. When were you served with this temporary restraining order?

A. At approximately a quarter to seven last evening—I mean, a quarter to eight.

[100] May I correct that, please?

Q. Give the Court that time.

A. A quarter to eight last evening.

Q. A quarter to eight last evening?

A. Yes, sir.

Q. At the time the United States Marshal handed you that paper, will you tell us what you were doing?

A. I was addressing a crowd of people at the Clinton County—at the Anderson County Courthouse.

Q. You heard one witness testify that you called out the names of some of these petitioners here on that occasion?

A. Yes, sir.

Q. Did you do that?

A. Yes, sir, I did.

Q. Tell the Court just exactly what occurred from the time you received that paper until you called off the names of the petitioners?

A. The marshal's—as I was speaking, they came to me, interrupted me, and asked me to come aside. Then we went inside. They handed me those two papers and they said, "This is a writ for injunction. You must appear"——

Q. What did they call that?

A. I believe it was "writ for injunction". I am not too [101] clear on what they actually did say. They said, "You are to appear in this Court Tuesday at 1 o'clock to show cause why the injunction should not be issued."

Q. Show cause what?

A. Show cause why this injunction should not be issued. I did not——

Q. Did they give you to understand you were under injunction at that time?

A. No, sir, they did not. They did not discuss that at any time. They did not tell me I was restrained from

speaking over there to the crowd, or anything. They said I was to appear in this Court today.

Q. Did they read that injunction to you, Mr. Kasper, on that occasion?

A. No, sir, they did not read it to me.

Q. Is it your testimony that on that occasion they read to you neither the petition nor the restraining order; is that correct?

A. Yes, sir, it is my testimony.

Q. Did you read either the petition or the restraining order yourself, personally?

A. No, sir. I just glanced at it because of the sort of pressure of the people outside there. I just saw the paper that said about injunction. That is all. I stuck it in my pocket and went on outside. I slit it open, saw my name [102] scattered through there a number of times with some other peoples'. I read just a part of who had filed the plea—who had filed the petition.

Q. How long did you say you were speaking at the time the marshals arrived?

A. Well, we had just begun our meeting.

Q. This man called you to one side and then transpired what you have just related?

A. Yes, sir.

Q. Then, did you go back and speak some more?

A. Yes, sir.

Q. What is the interval of elapsed time from the time you left the speaker's stand until you returned to the speaker's stand?

A. About a minute and a half, or a minute.

Q. It was then that you called off the names to your listeners of the petitioners?

A. Yes, sir.

[108] Mr. LEWALLEN: Your Honor, I thought we were only trying the motion for temporary injunction at this time. I think that was Mr. Simmons' expressed desire.

The COURT: I advised Mr. Simmons and Mr. Kasper that

they should have time, a reasonable amount of time, and it is not the purpose of this Court to hear them both unless all parties agree that the Court may hear them at this time.

Mr. LEWALLEN: We agreed, your Honor, to hear it on the second day. If Mr. Simmons will agree, we will go ahead.

[109] Mr. SIMMONS: I was thinking that your Honor would not foreclose me if we wanted additional time, and I certainly would grant my brother here the same opportunity. I think while we are washing the linen, we might as well do a good job of it.

The COURT: If you prefer.

First, I might ask you, Mr. Simmons, if you want to file an answer to that writ? Do you want time to prepare your answer? If so, the Court will grant you time and will grant you permission to file your answer and so take as long as you think is reasonably necessary to prepare your answer. I will follow your wishes about that.

Mr. SIMMONS: Your Honor, you know it is one thing for an attorney to prepare his case when he has his client sitting right at his elbow, and quite something else to prepare a case when your client is sitting in jail. Now, if your Honor has the idea here of committing Mr. Kasper to jail until such time as we feel we can go ahead with this, my feeling is a lot different.

The COURT: I think now that he will not be committed if he executes bond. He will be committed unless he executes bond today. He is now in the custody of the marshal under order of this Court, and will continue in custody until [110] this case is tried on the merits, unless he gives bond, which the Court will fix after hearing counsel for both sides.

Mr. SIMMONS: Well, your Honor, we will ask to proceed with the order of attachment hearing, too, at this time.

The COURT: All right.

By Mr. SIMMONS:

[111] The COURT: It is my understanding, Mr. Simmons, that you ask the Court at this time to hear both the

petition on contempt as well as the motion for continuance of this temporary injunction?

Mr. SIMMONS: That is right, your Honor, with the understanding on my part that I will give my brothers here any additional time they would wish.

By Mr. SIMMONS:

Q. Mr. Kasper, on the occasion when you were supposed to have addressed a large crowd of people in Clinton and you said to them in substance as follows: "Now, we can find out who our enemies are." Does that sound familiar to [112] you?

By the WITNESS:

A. Partially: When I returned out there after I had been given these papers and after I had glanced at the names there, I stated that, "These people named here"—and I named them, spoke them out—"are our enemies in this fight." Yes, sir.

CROSS EXAMINATION.

[115] Mr. SIMMONS: Your Honor, we should like to be able to see our client and talk——

[116] The COURT: Mr. Marshall, you are directed to let Mr. Simmons, Mr. Stansberry and Mr. Parker, at all reasonable hours, any of these attorneys, at a convenient place, to talk to their client. If they want to talk to him this afternoon, Mr. Marshall, you see that that is done, and provide comfortable quarters for Mr. Simmons and these attorneys to talk to their client. In the meantime, while Court is in recess, you arrange for them to meet at their convenience. I know they will be reasonable. They are entitled under the law to consult with their client.

Is there anything else?

Mr. SIMMONS: Nothing further, your Honor.

[117] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION, AT KNOXVILLE

Civil Action No. 1555

JOHEATHER McSWAIN, *et al.*, PETITIONERS,

vs.

COUNTY BOARD OF EDUCATION OF ANDERSON COUNTY, TENNESSEE, *et al.*, RESPONDENTS

MOTION FOR PRELIMINARY INJUNCTION

MOTION TO SHOW CAUSE FOR CONTEMPT

Second Day of Hearing

August 31, 1956
9 o'clock a. m.

(Whereupon, at 9 o'clock a. m., the hearing was resumed and the following proceedings were had:)

[120] Q. You arrived in Clinton on Saturday afternoon; is that right?

A. Yes, sir.

Q. And Saturday afternoon and Sunday you had conferences with students at the Clinton High School and others you contacted there; is that correct?

A. With parents at their homes, first.

Q. Parents at their homes? Then you had a meeting [121] on the courthouse lawn on Sunday afternoon with a group of students?

A. No meeting, no, sir. There were some students and parents who congregated around there and I talked with them informally.

Q. Of course, you discussed the plans, as you stated yesterday; you had come here for a purpose and for a plan? Is that what you said yesterday?

A. Yes, sir.

Q. Who formulated this plan that you came here under?

A. This is a plan which you might say was formulated several years ago by a man named Bryant Bowles of the National Association for the Advancement of White People.

Q. That is the plan you came here under?

A. Not his plan specifically. I have had no contact with Mr. Bowles. I have never met him, but Mr. Wells has repeatedly testified that I have organized some kind of a strike in Delaware, which I did not. Mr. Bowles did. It was successful, and is still successful.

[122] Q. You did not? Mr. Kasper, you addressed a large gathering at the courthouse lawn on Tuesday at Clinton, didn't you?

A. Yes.

Q. What would you estimate the size of the crowd was?

A. About 1500 to 2,000 people.

Q. Fifteen hundred to 2,000?

A. Yes.

Q. Did you talk with some reporters there; do you remember having some conversation with reporters?

The WITNESS: Are you referring to the night or daytime Tuesday?

[123] Mr. LEWALLEN: I am speaking of the meeting at night.

A. Yes.

Q. On the 28th of this month?

A. I don't recall talking to any reporters Tuesday night, no, sir.

Q. I will ask you if some time during the day on the 28th of this month you were interviewed by a reporter somewhere in the vicinity of the courthouse at Clinton?

A. I was interviewed by many reporters.

Q. I will ask you if you made this statement to one of the reporters who interviewed you, or this in substance, that you were staying out here until the principal, D. J. Brittain and the school board resigned, if necessary?

A. I may have said that in part, in context with many, many other statements without which that statement is meaningless.

Q. Tell us what you did mean, then?

A. It would mean that the concept of law that I have been proposing to these people in Clinton is that the writing of law to prevent coercion, either by force or by fraud, this is a cardinal part, a principal part of common law, and the great jurist, English jurist, Blackstone, has written a great deal about it. I have repeatedly stated that the Supreme Court decision is a coercion by force and by [124] fraud, on May 17, 1954, in forcing integration and race mixing of the people of the southland.

Now, with regard to this statement here allegedly made about Mr. Brittain and the school board——

Mr. Lewallen: May I interrupt you just a moment?

Q. Did you or did you not make that statement?

A. I did not make that statement as a finished statement, not exactly that form, no, sir. It had an entirely different meaning, the way I used it.

Mr. Lewallen: All right. Go ahead.

Q. Anything further to say?

A. Yes, I do.

It would seem to me, and it has always seemed to me, that any public official, any man who is a part of the Government is nothing but a servant of the people; he is not their master. That would include the high school principal and the county school board.

A majority of the people at Clinton—I am convinced it is a vast majority—do not want to mix races in the public schools. I believe that there is abundant evidence for that.

I certainly will not accept the role of being the only one who believes it or that I have taught them this within the last five days. These people have believed this all of their lives, and their forefathers believed it, also, and their children may believe it, as well.

[125]

We are still counting on that point of Mr. Brittain's resignation. I don't think Mr. Brittain is a Christian, but I don't think that makes any difference. He looks Jewish to me, but that shouldn't have too much bearing on the school system.

Mr. LEWALLEN: Let me interrupt you just a moment.

Q. If Mr. Brittain had been Jewish, would that have affected your position?

A. No, sir, not in this case. I want to bring out that this is a Christian community, with law-abiding people, and they are a deeply religious people.

They go over there and ride herd on the people, they are harassing people; they are not serving the people representing them.

Q. In other words, Mr. Kasper, what you are saying is that the public officials of Anderson County——

A. Not all of them. The ones I have specific knowledge of——

Q. Mr. Brittain?

A. I believe in the face of this situation, Mr. Brittain came out there in front of the school and he said he would be a coward if he resigned, and the people said, "No, no, [126] no; you would be a hero if you would defend us."

Mr. LEWALLEN: Let me interrupt you just a moment.

Q. Did the people say that, or did you say that?

A. The people said it and I said it.

Q. And you said it?

A. Yes, sir.

Q. Did you say it first or did they say it first?

A. I don't recall.

Mr. LEWALLEN: All right.

Q. Go ahead.

A. And that if a situation has arisen which requires action, immediate action, and that the people themselves have stated the kind of relief they want, even if it is immediate and temporary relief which may have to be revised later by other kinds of process, but if any man in the face of that kind of demand of the people—and a peaceful demand it was, a considered demand it was—if any man will continue to hold his job and hold his position and ride herd on those people, the wild grass will some day grow over his dead body.

[128] Q. I will ask you, further, if you told a reporter out there after your trial in the justice's courthouse at Clinton that you were going to remain there and help these fellows on the picket line to keep on organizing and distributing legal literature. Did you make that statement?

A. I did.

Q. You made that; you remember that?

A. Yes, sir.

[129] Q. You do admit you addressed a large gathering there on Tuesday night at Clinton?

A. I do.

Q. You admit, further, you addressed a large gathering on the 29th, which was Wednesday night?

A. I do.

[135] Q. The question was, did you state out on the courthouse steps, announce to that large gathering, which you have estimated to be around 1500, that, "An injunction has been served on me."?

A. No, sir.

Q. You didn't do that? I will ask you, further, if you

didn't make this statement, or this in substance: "You can go ahead"—you announced to the crowd—"and continue your activities, but I may not be able to be with [136] you"?

A. I said, "If after tomorrow this injunction is issued" —and I saw every reason why an injunction would be issued—I therefore said that, "If an injunction is issued tomorrow at 1 o'clock by Judge Taylor, so far as I know, it doesn't enjoin against any of the rest of the people who are not named. There are only five of us who cannot be down at the schoolhouse with the rest of you." That was my statement.

Q. In other words, you told them on that night that there were "Only five of us that could not be down at the schoolhouse tomorrow."

Q. I will ask you if you didn't tell the crowd this or [137] this in substance: "I will not allow these children to be deprived of an education because Brittain refuses to push these niggers out of school"?

A. I may have said something quite similar to that, in context with many other statements, without which that would have no meaning.

Q. I will ask you if you didn't state this, or this in substance: "I will stay here until these niggers are out of Clinton High School"?

A. I may have said that.

Q. I will ask you if you didn't say this, or this in substance, following those statements: "The Federal Court can file every kind of an injunction and enjoin you, but as long as that school is there no injunction can force you to do something you don't want to do"?

A. I did not say that.

Q. You did not say that?

A. No.

Q. I will ask you if you didn't urge the group to join you in your council to fight "niggerism"?

A. Yes, I said that.

Q. You said that?

A. Yes, because that is an ism, you see. There are lots of wonderful colored folks around here, and all over this country, as a matter of fact. I never saw anything more sad or more tragic than on Wednesday afternoon [138] that colored boy was brought down the street between two policemen with all of the white children following him, and then shortly later another colored boy walked down there, that boy holding his head up and trying to be dignified. He was a colored boy. Nothing is more tragic than forcing these poor people to be the whipping boys, the scapegoats for a situation which originally has arisen from the corruption of the Supreme Court and a great many of our Federal officials who are largely pushed and pressured by the communist conspiracy in this country and how to it.

Q. Now, Mr. Kasper, you have been talking about the corruption of the Supreme Court—excuse me. Go ahead.

A. I might just finish on that, that the NAACP is positively a communist middle organization. I can prove that. Everybody who has looked into the NAACP knows it is a white-led communist organization. Arthur Springborn is the white president of it. John Clayton Powell is the Negro with six front citations, W. E. B. Dupard, communist citations, and Herbert Lehman supporting all kinds of communist fronts, all kinds of communist causes. He is a vice president of it. He is supposedly a white man, also. There is no question it is a communist organization, and that is what I call "niggerism". In fact, we in the Citizens Councils are against any kind of ism except [139] Americanism, constitutional government.

Q. So you are opposed, then, to any organization that does not agree with your organization; is that right?

A. No, sir.

Q. Mr. Kasper, let me ask you again, sir, if you didn't state to the crowd after the marshal had served on you or given you these papers, which you say you didn't look into or did not see, if you didn't state to your audience that, "It is far more important for you to be here to-

morrow, two blocks away, than it is to be over in the Federal Court"?

A. I did. I certainly did.

Q. I will ask you if you didn't make this statement, or this, in substance —

A. Until we knew whether the injunction had been issued.

Q. You did make that statement?

A. Until we knew that an injunction had not been issued. That was not an injunction. I was given.

Q. Well, did you know what it was?

A. No.

Q. Do you now know what it was?

A. To me it was an order to appear in court to show cause why an injunction should not be issued. That is what I thought it was. In fact, that is what one of those papers was.

[140] Q. I will ask you if you didn't make this statement to your audience, or this in substance: "The big shots will be little shots before this thing is over"?

A. I did.

Q. You made that statement?

A. Yes, sir.

Q. What were you referring to about that?

A. Well, we might tie that in with another statement about enemies out there, "Your enemies".

I have been accused here of advocating every kind of unlawfulness, disregarding the law, no respect for the law, and so on. I will tell you, sir, I am extremely impressed by law, and I like it, but what I think we need is a return to constitutional law, constitutional government, common law, and so on.

Now, the state's attorney there, Mr. Fischer, State Attorney General, who tried me in the trial justice's court in Clinton last Tuesday, between Sunday and Tuesday, the time I was arrested and the time I was tried, I had [141] eleven different requests sponsored by Mr. Fischer to reduce bail bond and the jail door would be open. I could leave Clinton County Jail any time I wanted to if I

would leave Anderson County and the state of Tennessee, break down and become a criminal and never be allowed back in the state of Tennessee.

Q. Now, just one question about that.

A. Yes, sir.

Q. In other words, you say Mr. Fischer asked you to become a criminal?

A. Yes, sir, I positively do.

I might also say that Mr. Fischer was derelict in his duty. He should be prosecuted for even suggesting such a thing, because that is a high and honorable office, the office of Attorney General, and any time a man is charged with the high crimes that I was, sedition and inciting to riot, they are very serious crimes, even as great as murder, almost. They are serious crimes against the state. It is the duty of the Attorney General to prosecute, not to open the jail door to anyone. That man must stay in jail until his case is tried and he is either convicted or set loose.

That is the law, and that is why in your question about little shots—the people know this. They are just sort of getting—the people themselves here in Tennessee, in Anderson County, some of the most independent indi-[142] viduals, free-spirited people and wonderful people that there are in this world. They have been suppressed. They are afraid to do anything. Wages are low, taxes are high. They are afraid that the little bit they have—that there will be reprisals taken and they can't protest, they can't resist. Votes are stolen around here. They can't even express themselves clearly in a ballot box.

Q. That is in Anderson County you are referring to?

A. Yes, sir.

The sheriff holds two jobs when there is a scarcity of jobs. He is a bus driver and a sheriff, when there are a lot of men out of work; bootleg whisky that is seized is resold to cab drivers and they make money on that.

There is a man over in the Clinton County Jail right now with 84 days in there. He was 84 days awaiting indictment by a grand jury, to see whether or not he should

be indicted. He had the money in his pocket to post bail bond. They wouldn't agree to bail. His sister died and they wouldn't make a phone call for him; his brother had a heart attack and they wouldn't make a call for him.

This sheriff, state's attorney, mayor, school principal, all of them, they will be little shots, because the people are waking up. The people will throw them out in the next [143] election year. There is no question about it.

This is an important reform movement. This is a profound movement right here. We are going back to constitutional government. We are destroying a communist conspiracy and all of the corrupt officials who have played their silent part in it by refusing to stand up for the people themselves.

Q. All of these officials you have named here, these corrupt officials, you say should not stay in office, should be thrown out?

A. No, sir. I specified Mr. Fischer.

Q. Mr. Fischer?

A. Yes, sir.

Q. The Court knows he is elected.

A. I will testify sheriff J. K. Owens, who is leaving office today, thank God.

Q. And Mayor Lewallen of Clinton?

A. No, sir. I don't know anything about Mayor Lewallen.

Q. J. B. Wells, editor of the Clinton Courier-News?

A. I don't believe Mr. Wells is responsible. I believe freedom of the press should always be maintained. It is a cardinal point of our Federal Constitution, one of the [144] greatnesses of our nation.

Q. I will ask you if you didn't——

A. You asked me a question about Mr. Wells. I am answering it.

Q. You can answer that yes or no.

A. It requires a little more elaboration.

Q. All right. Elaborate.

A. Freedom of the press involves not merely rights; it involves duty.

Q. Mr. Kasper, I didn't ask you anything about freedom of the press; I asked if Mr. Wells was one of these corrupt officials.

A. Well, as I say, I don't think Mr. Wells is as close to the community and the people of Anderson County and Clinton, specifically, as he should be, because he tends to side with the sort of top ruling clique there.

Q. Do you know, Mr. Kasper, that Mr. Wells is editor and publisher of a newspaper here——

A. That is what I am talking about.

Q. Do you know that that newspaper has been recognized as one of the leaders, not only in this state, but in the nation?

A. Well, they recognize the Pulitzer papers. The Pulitzer Prize goes to such rags as the St. Louis Post Dispatch and the Washington Post, which are communist papers. They are aiders and abettors in the communist [145] conspiracy—the New York Times——

Q. Is the Clinton Courier-News one of those papers?

A. Not that I know of. I haven't even looked at it. I don't even read it.

Q. I will ask you, Mr. Kasper, if you didn't get up on the courthouse steps and make a tirade in the presence of those people there against the Pittsburgh News and the Knoxville newspapers and other newspapers?

A. I certainly did.

Q. Let me ask you, do you know the approximate population of Anderson County?

A. No, sir, I do not.

Q. If I told you that according to the 1950 census it was approximately 60,000 people would you accept that?

A. I wouldn't accept it from you, but I would check it with some other people first.

Q. In other words, if you read it from the Census Bureau records that it was approximately 60,000, you would believe that, would you not?

A. Well, if I had the book here I would believe it.

Q. You say that the vast majority of the people of An-

[146] derson County have been waiting for leadership; is that right?

A. Yes, sir.

Q. To get these oppressive officials you have named here out of office?

A. They are waiting for a government of men with front names and hind names and addresses, representatives of a representative government.

Q. Mr. Kasper, you say they are waiting for a government of men. In other words, you believe in a government of men and not a government of law; is that right?

A. No, sir. I believe——

Mr. SIMMONS: I object to counsel testifying.

By Mr. LEWALLEN:

Q. Mr. Kasper, after the marshal had served these papers or had given these papers to you, as you say, I will ask you if you said this, or this in substance, to the crowd assembled there: "We will carry on the fight until we win, tomorrow night and every night until this thing is over."?

A. Yes, sir, I did.

Mr. SIMMONS: Is that all?

Mr. LEWALLEN: Yes.

Mr. SIMMONS: I have no further questions.

(Witness excused.)

[147] Mr. CRAWFORD: I would like to have the record show that I am United States Attorney and am appearing at this hearing on the contempt phase of it at the request of your Honor, in that petition which has been filed alleging that an order of this Court has been disobeyed.

The COURT: All right, sir.

FRANK QUARLES, called as a witness by and in behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. CRAWFORD:

Q. Please state your name.

A. Frank Quarles.

Q. Are you United States Marshal for the Eastern District of Tennessee?

A. I am.

Q. In that capacity, Mr. Quarles, were you handed a temporary restraining order and copy of a petition on which that restraining order was based for service on Wednesday, August 29th of this year?

A. I was.

[148] Q. After receiving that order, what did you do?

A. I went to Clinton, Tennessee.

Q. After arriving there, what did you do?

A. Well, when we first arrived I went up to the courthouse to look for Mr. Kasper, and he hadn't arrived.

Q. That is the defendant here, John Kasper?

A. Yes, sir.

I went over to the drug store and got a Coca Cola and waited around until Mr. Kasper came, and then I went over to the courthouse where he was standing on the front of the courthouse and tapped him on the shoulder and told him I would like to see him a minute.

Q. State whether or not he was speaking to the crowd at that time?

The WITNESS: Sir?

Q. Was he speaking to the crowd assembled there?

A. Yes, sir, he was.

Q. Will you tell what you did?

A. I tapped him on the shoulder and told him I would like to see him a minute, and opened the courthouse door

and we walked inside the courthouse. I served the temporary restraining order on him.

Q. In executing that, serving that temporary restraining order, I will ask you if this is a copy of the one that you [149] served?

A. Yes, sir, it is.

Q. Now, in serving or executing that restraining order, what did you do; how did you do it?

A. I read the temporary restraining order, read it over, then I backed up to where it said 1 o'clock p. m. on Thursday in the courthouse in Knoxville.

Q. I believe the restraining order consists of four sheets, does it not, three or four sheets?

A. Yes, sir.

Q. And you state to the Court that you read that word for word to John Kasper?

A. Yes, sir, I did, and I backed up to where it set the date and read that line over to him.

I said, "Now, you understand you are to be over at Knoxville at 1 o'clock?"

He said, "Yes, sir."

I handed him this temporary order, a copy of it, and then went on to read the petition. I read down six or eight lines through the names of the ones that was asking for the petition, and he reached up and got hold of the petition, and he says, "If you don't care, I will read it. I can understand it better."

Q. Did you turn it over to him?

A. I did.

[150] Q. What did he do then?

A. Well, he stood there and read it for quite a bit and turned and walked out the front door of the courthouse and I went out the west door and come around the front of the building. About the time I got to the front——

Q. About how long did he take after he reached for the paper, the petition?

The Witness: About how long what?

Q. About how long was he looking at it before he went out the door?

A. Well, we was in there ten—somewhere between ten and fifteen minutes in the courthouse.

Q. He went out to the crowd again?

A. He went back out to the front where he was addressing the crowd when I walked up.

I went out at the west door and come back around to the front right up next to the building, pretty close to where he was standing.

Q. Will you tell what he said to the crowd?

A. He held up this paper, and he said, "The Marshal served a temporary injunction on me and I have to appear over at Knoxville at the Federal Court Building tomorrow at 1 o'clock for a hearing." And he said, "You all are cordially invited to come over and we will demonstrate." He said, "The Supreme Court ruling is not the law." He [151] said, "The will and the wishes of the people is law." He said, "I will have to go over there tomorrow but," he said, "I will be with you folks until every n-i-g-g-e-r is run out of the Clinton school."

Q. Who was present with you while you were executing the restraining order?

The WITNESS: Sir?

Q. Who was with you when you were executing this restraining order, when you served the restraining order?

Mr. SIMMONS: If anyone.

By the WITNESS:

A. Mr. Farmer, Deputy Marshal, and Mr. William Petree, Deputy Marshal, and Mr. Roy Whaley, Chief Deputy Marshal, and a policeman by the name of Ridenour.

Q. All of them were present while you were serving the restraining order?

A. They were.

Mr. CRAWFORD: Cross-examine.

CROSS-EXAMINATION.

By Mr. SIMMONS:

Q. Mr. Quarles, did you read to Mr. Kasper the petition first or the temporary restraining order?

A. I read the restraining order.

Q. Did you read the restraining order completely [152] through?

A. Yes, sir.

Q. You say you did?

A. Yes, sir.

Q. Are you positive about that?

The WITNESS: Sir?

Q. Are you positive about that?

A. Yes, sir.

Q. Was it the restraining order that after you got through he said, "Let me read it. I can read it better and understand it better"?

A. No: it was the petition that he asked me to read—that he asked me to let him read.

Q. Are you positive about that?

A. Yes, sir.

Q. The reason I am asking that: Mr. Quarles, Mr. Kasper says you did not read it to him.

A. Yes, sir. I understand that.

Q. I am asking you if you are positive you did read it to him?

A. I read the temporary restraining order to Mr. Kasper.

Q. Did you read it from start to finish?

A. Yes, sir.

Q. You did?

[153] A. I did.

Q. There is no doubt in your mind about that?

A. No, sir.

Q. After you read him that order, after you say you read the temporary restraining order, you proceeded then to read the petition?

A. Yes, sir. When I read the restraining order, I handed him a copy of it, and then started to read the petition, and I read down to about the middle of the first page and he got hold of it there and said, "If you don't care, let me read it." He said, "I can understand it better."

Well, I let him have the petition. I didn't read all of the petition. I read about middleways down the first line—the first page, and he asked for it, took hold of it, and I let him have it.

Q. Were you under any instructions on that day as to what disposition to make of those two papers?

The WITNESS: Sir?

Q. What instructions did you have with respect to serving these two papers we are talking about, the petition for the restraining order and the restraining order; what did you intend to do with those two papers on that day when you found Kasper?

A. I intended to serve them on him.

Q. Hand them to him?

[154] A. No, sir. I intended to serve them on him.

Q. Well, what do you call "serving"?

A. I call reading them serving them.

Q. Reading both of them?

A. I didn't read both of them.

Q. Why didn't you read both of them?

A. Well, he asked to read the petition himself.

Q. That was agreeable with you?

A. Yes. He wanted to read it. I let him have it.

Q. If Mr. Kasper says you did not read the temporary restraining order to him, then he is mistaken about that; is that your testimony?

Mr. CRAWFORD: Well, that is argumentative. We object to it, if the Court please.

The COURT: Sustained.

By Mr. Simmons:

Q. As you left the courthouse, you came around after you had served the papers, you came around, came out the west door of the courthouse?

By the Witness:

A. Yes, sir.

Q. Then you came back to the audience? is that what you said?

A. I came right back around to the front, about the ways [155] I went up.

Q. You heard Kasper speaking?

A. I heard him say that. I stood there and listened to him quite a while.

Q. Had you heard Kasper speak on other occasions?

A. No, sir. That was the first time I had ever seen him.

Q. Did you intend when you went there to hear him speak did you intend just to serve the papers?

A. No. I went to serve the papers. That was my purpose.

Q. Of course, you have discussed your testimony with these attorneys here, have you not?

A. No, sir. I told Mr. Lewallen—I believe it is Mr. Lewallen. The man in the middle there—this morning out there that I understood that Mr. Kasper swore yesterday that I did not read the papers to him, and told him that I sure did read the restraining order. They didn't ask me for it; I went to them and told them.

Q. Coming back to my other question, Mr. Quarles did you regard it as part of your duty to read the restraining order?

The Witness: How was that?

Q Did you regard it as your duty when you were going to serve Kasper with this temporary restraining order, did [156] you regard it as your duty to read it to him or just hand it to him?

A. Yes, sir, I did.

Q. Read it to him?

A. Yes, sir.

Q. Where did you get your instructions?

A. I have been an officer for about 18 years, Mister.

Q. That is part of your duties?

A. I always made it a policy to read most important papers to whoever I served them on.

Q. Is there any doubt in your mind, Mr. Marshal, as to whether or not you read the petition or the restrain order to Kasper on that occasion?

A. I read the restraining order. I started to read the petition and Mr. Kasper asked me for it.

Q. Did he ask you any questions about the legal meaning of the restraining order, what he was to do or not do?

A. No, he did not.

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[157] Joe Farmer, called as a witness by and on behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. CRAWFORD:

Q. Your name is Joe Farmer?

A. Yes, sir.

Mr. SIMMONS: I understood there was supposed to be a rule on witnesses.

Mr. CRAWFORD: He is an officer of this Court.

The COURT: He is an officer of this Court.

Mr. CRAWFORD: Assigned to this Court.

[158] The COURT: Yes, sir. A Deputy United States Marshal, Mr. Simmons.

By Mr. CRAWFORD:

Q. Are you a Deputy United States Marshal for the Eastern District of Tennessee?

By the WITNESS:

A. Yes, sir.

Q. Mr. Farmer, did you accompany your chief, Frank Quarles, and others to Clinton on Wednesday night of this week to serve a temporary restraining order on John Kasper and others?

A. Yes, sir.

Q. Were you or not present at the time of the service of this order?

A. I was.

Q. Where did you officers find Mr. Kasper?

A. We first seen him from across the street. He was pointed out to us by a city officer and also a county officer. He was pointed out as he walked up to the courthouse steps.

We started across the street and he opened the service with a prayer, and we waited until the service of the prayer was over. We proceeded across the street to the left of the building, to the west, and on up to the side of the building and all went up on the steps behind Mr. [159] Kasper.

Mr. Quarles tapped him on the shoulder and asked if he could see him just a minute. The County Court Clerk opened the courthouse door and told us that it was light inside and we could read the papers in there. We, six of us all together, Mr. Quarles, Mr. Whaley, Chief Deputy; Mr. Petree, myself and Mr. Clyde Ridenour and the city police officer and I believe a county officer—I don't know his name—all stepped inside the courthouse.

Q. Did Mr. Quarles have the papers?

A. He had all of the papers, yes, sir.

Q. What did he do then?

A. He proceeded to read the restraining order to Mr. Kasper.

Q. Then what happened?

A. He handed Mr. Kasper a copy of the restraining order.

He proceeded to start to read the petition. He read possibly four or six or maybe more lines down the page, the

first page. Mr. Kasper said, "If you don't mind, just let me have it. I can understand it better if I read it myself." Mr. Quarles proceeded to let him have the petition.

Q. What did Mr. Kasper do then?

A. He took the petition, read it, stuffed the papers in [160] his pocket and walked out the front door.

Q. Did you follow him, go outside?

A. No, sir. We all went out the side door, all six of us went out the side door on the west side.

Q. Did you hear him address the crowd?

A. I did.

Q. Will you tell the Court what he said—what you can remember he said—if anything, concerning the papers that had been served on him?

A. Well, the crowd of us, Mr. Quarles and the rest of us officers, just walked to the edge of the building after we got outside there, walked to the edge of the building back up towards the entrance to the front of the courthouse—not the same entrance we went in—and all of us walked up there and stood there for possibly ten or fifteen minutes, and then we stepped back a little farther.

He announced to the crowd that he had been served by the marshal with an injunction to be in the Federal Court at 2 o'clock the next day, which would have been yesterday, and that the order said for him to be over here and he would be over here, and he asked that all who would want to come, to come over here with him, and he said that he was going to be there from now on until every nigger was run out of the Clinton High School.

Q. Did he or not make any statements in your presence [161] as to who the injunction applied to?

A. He said it applied to him, outside of—he named off the other five persons that were named in the petition and the restraining order.

Q. Well, did he make any statement as to the effect of the injunction?

A. He said, "This doesn't mean anything." He said, "It is the will of the people, and we are going to win."

Mr. CRAWFORD: All right. Cross-examine.

CROSS-EXAMINATION.

By Mr. SIMMONS:

Q. Since this occasion, I suppose you and Mr. Quarles—he is your superior, is he?

A. Yes, sir, he is.

Q. You have discussed the situation between you?

A. Only as to what he said.

Q. Do you agree with everything that he said?

The WITNESS: That Mr. Quarles said?

Mr. SIMMONS: Yes.

A. Yes, sir.

Q. Do you deviate in any way with regard to whether or not he read the restraining order or petition?

A. He read the restraining order.

[162] Q. Read it from start to finish?

A. He did.

Q. Did he read the petition from start to finish?

A. He did not.

Q. He permitted Mrs. Kasper to read that in his own way?

A. Yes, sir, after Mr. Kasper had asked to let him have the petition.

Q. Are you positive, also, that he read the order to Mr. Kasper; not the petition.

A. He read the restraining order, yes, sir.

Mr. SIMMONS: No further questions.

Mr. CRAWFORD: That is all.

(Witness excused.)

JAMES LOGGANS, called as a witness by and in behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. CRAWFORD:

Q. Please state your name to the Court.

A. James Loggans.

[163] Q. And your age?

A. Thirty-six.

Q. Where do you live, Mr. Loggans?

A. I live in Knox County, on Murray Road.

Q. What is your occupation?

A. News editor of the Clinton Courier-News.

Q. You live in Knox County and work in Anderson County?

A. That is right.

Q. Mr. Loggans, I take it that you have attended some of the meetings in Clinton since Sunday?

A. I have.

Q. Were you present Wednesday night of this week—Wednesday evening or Wednesday night of this week——

A. I was.

Q. (Continuing) —on the courthouse grounds in Clinton?

A. Yes, sir, I was.

Q. Do you know John Kasper on sight by this time?

A. Yes, sir, I do.

Q. Was he there Wednesday night of this week?

A. He was.

Q. What did he do?

A. He was addressing the audience from the courthouse [164] steps.

By Mr. CRAWFORD:

Q. I will ask you if you were present in the crowd on the courthouse grounds when Mr. Kasper stepped inside of the courthouse building with the United States Marshal?

Mr. SIMMONS: He said, your Honor, he understood. I think that disqualifies him.

The COURT: Yes, not what he understood.

Mr. CRAWFORD: He says he saw that, if the Court please.

The COURT: Just tell me, Mr. Loggans, what you saw and heard, without what you understood.

Mr. CRAWFORD: That is the way I understood it.

By Mr. CRAWFORD:

Q. Did you or not see Mr. Kasper leave his station [165] speaking to these people and go inside the courthouse with the United States Marshal?

By the WITNESS:

A. I did.

Q. You saw that?

A. Yes, sir.

Q. Were you present when he returned and saw him return to the crowd?

A. I was there and saw him.

Q. How long did you stay there?

A. I stayed there until he finished his speech, then I interviewed quite a few people in the crowd adjacent to the courthouse there. I remained in Clinton until possibly 11:30 that night.

Mr. CRAWFORD: Mr. Loggans, it is somewhat difficult, because of the ruling of the Court, for me to direct your attention to specific things which Mr. Kasper said. We don't want you to go into everything he said.

Q. Did you take any notes on his address?

A. Yes, sir, I did.

Q. I will ask you if he made any reference to an injunction or papers having been served on him by the United States Marshal?

The WITNESS: If I may, I would like to refer to my notes [166] I took that night, if that is permissible.

Mr. CRAWFORD: You certainly may.

The COURT: You may.

The WITNESS: These notes are not chronological or any special sequence. It is notes I took during the evening.

Mr. SIMMONS: Your Honor, may I inquire as to when these notes were made?

The COURT: You may, sir.

The WITNESS: They were made during the talk at the courthouse on Wednesday evening.

By Mr. CRAWFORD:

Q. Go ahead.

By the WITNESS:

A. Mr. Kasper came out of the front door of the courthouse and told the crowd assembled that he had been served with an injunction. He said he would have more to say about this later in the evening.

Then he commenced to speak. He said that the people could go ahead and continue their activities here as they had Monday, Tuesday, and Wednesday, if these persons are not specifically named in the order.

He later said, "We have almost carried this fight to victory, but let's keep on until we win it. You have seen [167] how it is done. You know how to do it. Now, keep on doing it."

He further said, "The Federal Court can file every kind of injunction and be enjoined, but as long as that school is there", and so forth. Some other remarks in here about different things.

Then he continued on, "But no injunction can force you to do something you do not want to do."

Q. Do you have other notes?

A. Yes, sir, I do.

Q. What else was said?

A. He made this statement: "I am not going to allow children to be deprived of an education because Mr. Brittain refuses to push those niggers out."

Then he made some comments of which I do not have direct quotes, or anything of that nature, about the news-

papers, the Knoxville newspapers, and directly Mr. Wells and the Clinton Courier-News. He said that we can read other newspapers. He indicated that the truth was not being printed in these newspapers. He said, "We can read other newspapers and get the truth."

He says, "I will stay here until those niggers are out of Clinton High School."

Q. Are out of what?

A. Out of Clinton High School.

[168] Then he urged the crowd to join his organization, which he called the Seaboard White Citizens Council, and he talked at some length on this, urging people to join the organization.

Q. Was there any attempt on his part to organize a council that night?

A. No, none that I saw.

Q. And collections taken?

A. Not that I saw that night.

Q. Do you have any further remarks regarding the power of the press?

Mr. Simmons: I object to the leading question. It is highly improper.

The Court: No. It is proper. You may answer that question, if you can.

By the Witness:

A. He said that the people, the power is with the people, and he dwelt at some length and remarked that he had heard people, leaders in the community and others, say that they must obey the law. He said that the law was with the people; not the court.

Q. Read that louder, that last statement. Read that a little louder.

A. I didn't quote it. That is not a direct quotation. Those are notes that I took.

[169] And he criticized—he stated that the leaders in the community and others, said they were obeying the law. His view was that the people were superior to this law, that the Court did not have any superior power over the people.

Q. Do you have any other assertions along that line?

A. Well, I have among my notes here some things.

He said he would get inexpensive copies of the United States Constitution and give to the school children.

Mr. Simmons: I don't hear him.

The Court: Mr. Loggans, talk a little louder, please.

The Witness: He said, "I will get inexpensive copies of the United States Constitution to give to all school children."

He said, "We are not going to be pushed around here, because we know what our rights are." And he talked at some length about, "We don't have to work in salt mines. We can assemble," and so on.

By Mr. Crawford:

Q. Mr. Loggans, were these statements, all of them, made after or some of them made before service of the restraining order, the ones you have given?

[170] A. The ones I have made here, read here, were given after the restraining order.

Q. They were made after he stated he was served with the injunction?

A. Yes, sir.

Mr. Crawford: That is all, Mr. Loggans.

Cross-examination.

[171] By Mr. Simmons:

Q. That is the newspaper down there at Clinton; is that right?

By the Witness:

A. Yes.

Q. You are working for the newspaper there in Clinton?

A. That is correct.

Q. Do you have your notes there on this speech, that you made on that occasion?

A. I do.

Q. How do you identify from your notes what notes you made before the papers were delivered as contrasted with after the papers were delivered?

A. My practice is usually to—as you know, this is a weekly newspaper. I write stories all through the week and edit those stories. My practice has been to keep all of the notes together of any story that I may be covering, and this is the notes that I took during the speech, which I keep in my notebook to write the story of that night's activities.

Q. Have you put those in affidavit form?

A. Yes, sir, I have.

Q. At whose request?

A. At the request of Mr. Lewallen.

[172] Q. When did you make that affidavit?

A. Yesterday, I believe, at about noon.

Q. How do you establish that you know there was a restraining order served on Kasper; how do you know that?

Mr. Crawford: He has not said that, if the Court please. He didn't testify that he knew.

Mr. Simmons: I would like to know what he did say, then.

The Witness: He announced to the audience from the courthouse steps that, in his words, an injunction had been served. That is what I based my story on.

By Mr. Simmons:

Q. You have heard a lot of Kasper's speeches, have you?

A. I heard the one Tuesday night and the one Wednesday night.

Q. In the one Wednesday night, that is when the papers were served on him?

A. One on each evening.

Q. Was it Tuesday or Wednesday night the papers were served?

A. Wednesday.

Q. So, your notes you testified from were taken after [173] the papers were served on Wednesday night; is that correct?

A. That is correct.

Q. What was his language there with respect to the injunction, that it could not stop the people? You have testified he said something to that effect.

A. This is a copy of that I copied that evening: "The Federal Court can file every kind of injunction and enjoin you, but as long as that school is there"—and so forth. There was a section there that I did not take down. "No injunction can force you to do something you don't want to do."

Q. What meaning did that convey to you from his remarks, bearing in mind the context; what meaning did it convey to you?

A. It conveyed to me the—this is the opinion that I gathered, my own personal opinion—that he was informing these people that they did not have to abide by any court injunction is the words he used.

Q. No court injunction had been issued against those people is what he told them, or what did he tell them?

A. He read the names of the persons who were named in this injunction.

Q. He didn't tell the people that he, himself, was not bound by this restraining order, did he?

[174] A. If he did, I do not remember it.

Q. So far as the text of his remarks lay, he did not at any time indicate his own self to be above an order of this Court; did he?

A. I don't know about *about* being above this Court.

Q. Not being amenable to an order of this Court. He didn't indicate that in his talk, did he?

A. He said—I will quote further from my notes, if I may.

He said, "I personally may not be able to participate in any of these activities."

This was following the remark in which he said the people whose names were not specifically named could go ahead with their activities as they had on Monday and Tuesday.

Then he said, "I personally may not participate in any of these activities, but I will remain here."

Q. Meaning where?

A. I assumed he meant in Clinton.

Q. You have never seen any collections made there at any time, have you?

The WITNESS: On which occasion?

Q. In Clinton at the time you were there at these gatherings.

[175] A. Yes, I did.

Q. When was that?

A. On Tuesday afternoon.

Q. Who made that collection?

A. I don't know as there was an organized collection. I saw people handing money to Mr. Kasper.

Q. You don't know what that was for; it was not a membership drive, or anything like that?

A. I have no knowledge of that.

Q. You have never seen membership applications distributed, have you?

A. I do not believe so.

Q. Now, of your own personal knowledge, Mr. Loggans, you don't know whether the marshal read—what papers the marshal read to Mr. Kasper and what he did not read?

A. I do not.

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[176] FREDERICK JOHN KASPER, one of the respondents herein, having been previously sworn, was recalled and was examined and testified further in rebuttal, as follows:

REDIRECT EXAMINATION.

[181] The COURT: I will hear you.

The WITNESS: The views I have stated to the people of Clinton is that the Fifth Amendment to the Federal Constitution declares that there is a compact of the several states and of the people, and that the Federal Constitution cannot be changed without the consent of the people, you

may say, through their respective states, and the process for amendment of the Federal Constitution is by having three-fourths—or was it two-thirds—of the state legislatures voting to change the Constitution, or the people themselves, by referendum voting to change the Constitution.

My views have been and are now that the Supreme Court decision of May 17, 1954, was a reversal of all previous legal opinions, the very best legal opinions, for many years.

It also was based primarily upon the writings of a Swedish speciologist by the name of Gunnar Myerdahl, who wrote a book called "The American Dilemma," allegedly a discussion and analysis of the American racial question. This man admittedly had been in this country only five days, and he called our American Constitution merely a plot against the common people. He has never visited the South.

[182] The sources used by that Court for its decision, some 11 or 12 different writers, sociologists, psychologists, and wire-haired intellectual——

Mr. Crawford: If the Court please, I want to enter an objection to this. This is not responsive to Mr. Simmons' question.

The Witness: Yes, it is.

The Court: I don't want a long dissertation about the philosophy back of the decision of the Supreme Court.

That is not the question. The question is whether you have willfully violated the order of this Court. I don't care about your views about that decision. That is the law of the land, and this Court is required to follow the law of the land, as well as citizens who live in this country, and the law of the land is going to be followed by this Court.

The Witness: Yes, sir.

The Court: I don't care about your views about this.

The Witness: Well, sir, just with regard to the fact that the Supreme Court judges, as yourself for instance, are appointed by the President and confirmed by the Senate of the United States for a lifetime. There is no way that the people can redress the decision of those men

[183] except through impeachment, which is very seldom done and very difficult to accomplish, if the decisions seem to conflict with the vast majority of the will of the people in our representative process.

The people of Tennessee and other states have never been given a referendum on this entire issue of whether they wanted to integrate in their public schools, and the contention is—and I know it is shared by former Supreme Court Justice James Byrne, of South Carolina, and it is shared by Senator Eastman of Mississippi, it is shared by all of the signers of the southern manifesto.

Mr. Crawford: If the Court please, I want to renew my objection to this.

The Court: The objection is sustained. Don't go into this matter any further. That is the direction of the Court.

The Witness: Yes, sir.

By Mr. Simmons:

Q. Mr. Kasper, I will restate my question and ask you to confine your answer to the question, please.

By the Witness:

A. Yes, sir.

Q. While you have been in Clinton, Tennessee, have you [184] at any time stated to those people that you were above the law?

A. No, sir.

Mr. Simmons: That is all.

Mr. Crawford: No questions.

(Witness excused.)

The Court: Anything further from either side?

Mr. Simmons: That is all from our side, if the Court please.

The Court: Anything further from your side?

Mr. Crawford: No, your Honor.

The Court: How much time do you want to argue?

(Counsel for the respective parties thereupon addressed oral arguments to the Court, following which the Court delivered his decision from the bench as follows:)

[199] Thursday, September 6, 1956.

(Thereupon, at 1:00 o'clock p. m., the proceedings in this cause were resumed as follows:)

[200] Mr. LEWALLEN: If your Honor please, we would like to announce to the Court that by agreement of counsel, the testimony heard heretofore on the 30th is to be treated as part of the record. I will try to refrain from repeating.

Mr. SIMMONS: That is a correct statement, if the Court please.

The COURT: All right, sir.

LEO W. GRANT, JR., a witness in behalf of the petitioners, having been previously sworn, resumed the stand and was examined and testified further as follows:

REDIRECT EXAMINATION.

By Mr. LEWALLEN:

Q. You are Leo W. Grant, Jr., of Oak Ridge, Tennessee; is that correct?

[201] A. I am.

Q. You are an attorney at law?

A. Yes, sir.

Q. A member of the Tennessee bar?

A. Yes, sir.

Q. Mr. Grant, I believe you previously testified in this matter on the 30th day of August here before this Court; is that correct?

A. I did.

Q. In your own words, will you now tell the Court what the situation is in Anderson County and around the high school at Clinton; what you have observed when you were there since the granting of the preliminary injunction.

The WITNESS: Chronologically, you mean?

Mr. LEWALLEN: Yes, if you will.

A. Friday afternoon, the 30th or 31st, I returned from Federal Court in company with yourself and Mr. Fischer and Mr. Davis.

Clinton at that time was filled with many moving, milling people, just talking. Just a typical Friday night paynight crowd.

I got in my car and drove through town. Everything looked peaceful. I went to a dance Friday night, anticipating no trouble whatever. I was dumbfounded when I got the first radio reports——

[202] Mr. SIMMONS: We object to the "radio reports".

By Mr. LEWALLEN:

Q. Just tell what you personally heard and saw, Mr. Grant, please, sir.

By the WITNESS:

A. I received a telephone call from yourself that your father's house was being threatened by a mob.

Q. As a result of that, did you go back to Clinton?

A. Yes, I did. It was early morning hours when I arrived. Most of the people on the street at this time were just teenagers looking for some excitement. There was no insurrection in progress.

Q. You don't know what had transpired prior to this time?

A. No, I don't.

However, the city officials seemed to be very disturbed. Everyone seemed to be in a high state of excitement.

Mr. SIMMONS: I will object to opinions on what it seemed like to the witness.

By Mr. LEWALLEN:

Q. Did you talk with some of the city officials, Mr. Grant?

[203] By the WITNESS:

A. I did.

Q. What did you find there; what did you see?

A. Fear.

Q. What hour of the night was this?

A. Early morning hours. I couldn't be exact.

Q. Was it after midnight?

A. Oh, yes, after midnight.

Q. Now, on Saturday, during the daylight hours, were you in Clinton?

A. Yes, I was.

Q. What was the situation on Saturday in Clinton in and around the high school there?

A. There was agitation around the courthouse. The school was empty. There was no activity there. There was no organized agitation; merely large numbers of people moving up and down the streets. Traffic was unusually heavy. The atmosphere was tense.

Q. Later in the afternoon or early evening, what was the situation you found existing in and around Clinton?

A. Well, in compliance with a resolution of the city council, I was sworn in as a special policeman of the city, serving without pay. I attended a meeting with a group of other citizens who were also serving as city policemen for the maintenance of law and order, under the assistant chief of police, Wilson.

[204] We were held—I say "We". This group of city policemen and the regular city policemen held an organization meeting.

Q. About what time of day was this?

A. We intended to meet at 5. We actually didn't meet until 5:30. The actual meeting didn't get under way until about a quarter of six, due to the fact that we did not have certain police equipment we had been supposed to get. It was necessary to run around town and collect it.

About a quarter of six, we held a meeting with the city policemen, explained and outlined their duties.

By this time, a big crowd around the courthouse had grown larger. One loud-speaker car was parked in the

center of the square. I don't mean parked by a parking meter.

At any rate, a meeting was held. I took charge of the auxiliaries, explained that our problem was one of preventing riot rather than suppressing a riot. The technique used would be the familiar police one of moving them along, prevent congregating.

Q. Was it necessary to take at least preventive measures there?

A. I felt it was, yes.

Five men were posted at the mayor's house to prevent a recurrence of Friday night's adventure, and other details [205] were posted through the downtown district, and one of the details was posted at a critical intersection. The main body of possibly—not "possibly", Twenty-seven men—were taken to the courthouse. We were ununiformed, so that three to four men were broken down in command of a uniformed officer.

Q. Was it necessary to arm these special policemen, Mr. Grant?

A. In my opinion it was, yes, sir.

Q. Were they armed?

A. Yes, they were.

Q. All right. Go ahead.

A. The problem we faced was this: we could have at any time Saturday night dispersed the mob. We had the capability, but to have dispersed those people would have let 3,000 vandals roam at will, practically, through the city, and our tactic——

Q. Is that what you estimate the size of the crowd there on that occasion?

A. Yes.

I never had what you would call a vantage point. I moved through the courthouse square and the city jail and back to the school, moved through the mob continually—I would say "crowd" at this venture; not a mob.

I talked to many of them. Their threats were mostly [206] verbal. One or two people that refused to move along were arrested. They resisted arrest violently. They

were arrested for a breach of the peace and resisted arrest, the individual officers taking the warrants out. I think it was necessary to arrest four people.

About 8:30 a crowd began to congregate on Linden Street. The individual teams of officers, at my direction, attempted to move them on, attempted to get them cut in half, keep them circulating. They refused to move on, by just simply standing pat. There was never any overt act of resistance; they simply stood fast.

Well, at this stage, some of the teenagers in the crowd started screaming, "Nigger lovers". "Kill them", things like that. They were just words. They were not under any attack, or anything.

So I formed a skirmish line, putting the left flank on the courthouse and the right flank around the courthouse wall, instructed the right officers to move forward slowly; don't run or charge; just move slowly forward. It was my hope that the crowd would move on. However, when we reached the crowd, an unidentified man tore off his tie, threw his coat on the ground, and started screaming——

Q. What did he say, Mr. Grant?

A. "Christians, kill them. Kill them."

Q. As a result of the outburst on the part of this unidentified individual in the crowd, what took place? [207]

A. The crowd advanced on us. We got to within about a foot of each other, and at this point the absence of police equipment became a little bit disastrous. My men didn't have any night sticks; they had a family shotgun, that type of weapon. You can't grapple with a crowd of that size, because the weight and momentum of the crowd will push your men over. You must keep them at a distance. That is the purpose of a night stick. Had we had the sticks, I think we could have moved them on, but when my men——

Q. As a result of that absence of equipment, what took place?

A. Well, my men started grappling with individuals, and it looked like the skirmish line was going to become overcome, so I shouted as loud as I could two times, ordering

them to disperse. I don't believe they heard me, they were screaming so loud.

They were screaming at this point, "Get their guns", and it looked like they had the capability of doing that, so I took a non-explosive tear gas grenade, pressurized grenade, and rolled it at their feet, let that grenade go off, and ordered my men to retreat slowly. We walked backwards. We didn't run, although——

Q. Was it necessary to use more than one gas grenade? [208] A. Yes. They charged around the flanks of us. This time they charged very vigorously at two points, and I put a grenade at the head of each point, again non-explosive, rolled it under their feet, didn't even throw it through the air. I was afraid of hitting one of them in the head. They stopped at that point, and they surged around and came up the center. I used two more grenades at that juncture. I had six.

My last grenade I gave to a police officer, Clyde Ridenour and instructed him that it was a jumper type. It was explosive and dangerous. He was to use it in the event of a charge.

I then rallied some of our men and got the older, more excitable ones to the rear, brought my stronger ones to the front, explained that on this last charge we wouldn't wait to be attacked; we would charge them, and that if they did not disperse, if the attack continued, that I would fire in the air. They understood that my discharge of a weapon in the air was not a signal for any firing, that I would fire in the air.

Q. These measures you are telling the Court about, those measures were brought about by what necessity; was this a mob?

A. Well, at this time it was a mob. It had amateur standing. It was a spontaneous type of thing, had no di- [209] rection or intelligence. There was no regular leader; it was simply spontaneous, merely a spontaneous mob. They had no focal point. As I say, at any time Saturday night we had the capabilities of dispersing those people, but had we scattered them all over town, I think

we would have done the town a disservice. Our purpose was to keep them with us.

Q. Tell his Honor, Mr. Grant, whether this was a continuation of those matters that have heretofore been testified to before this Court growing out of the integration of the Anderson County schools.

A. Oh, yes. Most of the rioters—we call them that. Most of the rioters spoke to me of their experiences on Thursday and Friday night.

In fact, while we were keeping the crowd circulating, keeping them moving, several of the 17 and 18-year olds, the T-shirt crowd, came up to me and in a half joking fashion complained that by keeping them moving I was preventing them from having any fun like they did Friday night. One or two of them said, "It looks like there will be no fun turning cars over tonight." We didn't arrest them, or anything.

Q. Had there been cars damaged of tourists stopping in town there on previous occasions?

A. I don't know, personally.

Mr. Simmons: I object, your Honor, unless they fix the date.

[210] By Mr. Lewallen:

Q. You don't know?

By the Witness:

A. No.

At any rate, this crowd identified themselves to me as the same people as Friday night. They made the statement, "We took over the town Friday night. We are going to wreck it." That type of thing. However, our people were interesting enough to them that they left the town alone.

Q. Was it necessary, Mr. Grant, for the Governor of the State, or the responsible authorities, to send in additional help there on that night?

A. The Highway Patrol arrived about the time the weapons were being cocked to fire into the air.

Q. Do you know to what approximate strength it was necessary to bring in the Tennessee Highway Patrol?

A. I counted 39 cars.

Q. You don't know how many men?

A. No.

One skirmish line formed—you see, my men were without uniforms and were carrying weapons. I was greatly concerned that the Highway Patrol coming into town and seeing armed men might assume we were part of this crowd, and place us under fire.

Therefore, the crowd was instructed when they heard [211] the sirens they would fall back on the courthouse steps in two ranks. The uniformed officers were to move to the front immediately, all muzzles were to be lowered, and we were to present as peaceful an appearance as the crowd would let us.

This was executed. I immediately reported to Captain Burdette——

Q. Is he the chief of the Highway Patrol?

A. Yes, he was the chief, but the task force commander, or troop commander, or whatever they referred to him as, was Captain O'Rearden.

I told Captain O'Rearden I had approximately 47 men under arms in the town, and I told him their locations. I said that I was immediately recalling them to the city jail. I didn't want any of my people shot as armed rioters.

I took them back to the jail. There was a hurry-up call from the Patrol. They said they needed some help, so I moved my people out of the city jail and into the courthouse by a side door.

Q. Why did you move them into the courthouse, Mr. Grant?

A. The order on which I moved them in there was based on the fact that the courthouse might be attacked and burned. We moved in there and found what fire fighting equipment we could, taking positions at the doors to hold [212] the courthouse against such storming if necessary.

We stayed on possibly about thirty minutes, and then I disarmed my men, and in groups of twos and threes, so they wouldn't provoke the crowd, sent them home.

Q. Mr. Grant, were you in Clinton most of that night?

A. In Clinton all of that night.

Q. Do you know how long the groups or the mob you have described remained around the courthouse square and in and around the schoolhouse area?

A. After the Patrol arrived, the mob became a crowd again, not too belligerent a crowd; they were more fascinated by the troopers' appearance and equipment than they were interested in prolonging their resistance.

At this time a speaker whom I had prevented from speaking began a speech. We made sure it was calm. The troopers cleared the road. The crowd didn't resist this. They cleared the road and allowed Mr. Kernshaw to address the audience.

He told them there would be no violence, no rabble rousing.

Mr. Lewallen: Mr. Grant, let me ask you this:

Q. Were you there on Sunday?

A. Yes, I was there again on Sunday when the guard arrived.

[213] Q. When you say "guard", will you state for the record what you mean?

A. The Tennessee National Guard, under command of Colonel Warren Giles as group commander of two battalions, put in an appearance.

Major General Joe Henry, State Adjutant General, arrived. Captain O'Rearden, troop commander for the patrol turned his assignment over—the security of the town over to the guard.

Q. Do you know approximately how many men were brought in, or necessary to bring in there, the National Guard?

A. Yes. Two battalions. The first vehicles that I saw were Jeep-mounted M. P. batallions. Of course, they had a reconnaissance batallion, which contains an M-41 tank.

Q. Do you know how many men were brought, in approximately?

The Witness: You mean, that I personally saw?

Q. Well, do you know how many were brought in?

A. I know the composition of the reconnaissance battalion, yes, but as far as vehicles that I saw——

Q. Do you know approximately how many men it was necessary to bring in to restore order at Clinton?

A. 667.

[214] Q. 667?

A. Yes, sir.

Q. Now, Mr. Grant, since the National Guard has been there—were you there on Sunday night after the National Guard arrived around noon some time that day?

A. At the time, I was acting as bodyguard for your wife and child. There was a throng of people—I guess that is the proper word—gathered in front of the theater. General Henry felt that the people were peaceful and would cause no trouble.

About an hour later, it was necessary to disperse them with a skirmish line. The skirmish line had fixed bayonets, and some of them had gas masks.

Q. Would you say it was necessary for the National Guard to have fixed bayonets to disperse the mob or crowd that was gathering there?

A. As to the necessity, I don't know, but the fact that the troop commander felt it was, and they fixed bayonets and had tear gas ready, and a very efficient man moved the crowd on, dispersed it.

Q. Now, Mr. Grant, do you know whether it has been necessary to prohibit or lay down some stringent rules on the part of the military there?

A. Yes. General Henry has issued an order which has been very efficiently enforced, that there will be no public [215] assembly, there will be no use of public amplifier systems, there will be no parking on the courthouse square after 6:00 p. m. He has also found it necessary to establish road blocks, and he tells me he has turned back 50 per cent of the vehicles coming into Clinton as containing people that had no business in Clinton, didn't live there and had not satisfactory motives for coming in.

Mr. LEWALLEN: Let me ask you this:

Q. Do you have any knowledge of any disturbance in any other part of Anderson County?

A. Yes, I do. I stayed up all night——

Mr. Simmons: If your Honor please, I wonder how far the Court is going to permit this latitude. I am not interested in——

The Court: Yes. The details; I am not interested in; just the overall picture.

Mr. Lewallen: Just this one further thing:

Q. Do you know whether it has been necessary for some of these rioters to be arrested by the military?

By the Witness:

A. Yes, I do.

I have seen persons brought in. I have seen persons forcibly brought in, restrained at gun point. I have seen newspaper men and photographers attacked by these persons—not by these persons, but by their friends and asso- [216] ciates upon their release.

I have personally received threats too numerous to count or record.

Mr. Lewallen: You may ask him.

Cross-Examination.

By Mr. Simmons:

Q. I believe you testified earlier that you live in Oak Ridge?

A. I do, sir.

Q. Did you volunteer your services or were your services requested?

A. They were asked, requested.

Q. Was there any hostility there reflected against you which you could feel because you were a resident of Oak Ridge; not a resident of Clinton?

A. No. None of the residents in the mob were in position—the mob was mainly composed of nonresidents. They were not in position to criticize my presence there.

Q. You had a detail of 47 men?

A. Yes, sir.

Q. You took your orders from whom?

A. Took them from the assistant chief of police. The chief of police was sick. The assistant chief of police in some cases—I took my orders from the mayor, the chief [217] law enforcement officer of the town, Mayor Everett Lewallen.

Q. Who is the authority there in Clinton that actually deputized you and your men?

A. The city judge swore us in, Paul Horton.

Q. As deputy sheriff?

A. No; city policemen, under a special resolution of the city council which met that morning.

Q. Then, after you and your crowd were sworn in as city policemen, then you were armed?

A. Yes, sir.

Q. Where did you obtain your arms?

Mr. LEWALLEN: Your Honor, we don't think that is material in this matter. Certainly these men——

Mr. SIMMONS: Well, I don't really care.

By Mr. SIMMONS:

Q. At the time you were there dealing with this crowd, I believe you said that no one in the crowd, so far as you knew, were armed or there was no manifestation of arms?

By the WITNESS:

A. Well, I took two dynamite caps away from one person that was arrested, and one individual came forward, started to draw a pistol from his belt, and changed his mind and stuffed it back in his belt and faded back into the crowd.

We would have arrested him—in fact we were on our [218] way to do it, but we had our hands full, and by the time we assembled he was gone. That was all of the weapons I saw.

Q. Prior to your taking over there in that capacity, had you previously called upon the governor of Tennessee?

The WITNESS: Did I?

Q. Or the head of the Tennessee Highway Patrol, for assistance?

A. I, personally, no. The only state official I talked to was after we were in this slugging match. The general called—a runner came down and said I was wanted on the telephone. I went back into the courthouse, put another man in charge.

The Adjutant General of the state asked me what the situation was. I advised him that in my opinion it was critical, that if the mob ever lost its interest in attacking us, I could not possibly control the situation, because I had no mobility. We were on foot. The Patrol's arrival would protect the town, and we could take care of ourselves.

Q. At the time you and your crowd were deputized, the State Patrol had been requested?

A. Had been requested, yes, sir.

Q. And were they enroute to Clinton at the time your crowd was deputized?

A. No, sir, not that I know of.

[219] The first word that I had that the Patrol was actually coming—you see, the Patrol had been requested Wednesday, Thursday, Friday, and had not put in an appearance. The Patrol was requested Saturday and had not yet put in an appearance. At about a quarter—no. About 8:30—somewhere around 8:30 or a quarter of nine—no. 7:30 or a quarter of eight. The time is confusing. A newsman grabbed my sleeve and advised me that the Patrol was mustering in Alcoa Highway. I had heard this rumor, I think, every night last week, so I told him that I would appreciate it if he would not tell this to my men, that when the Patrol got there we would believe it when we saw it, that we had heard it before.

Q. So, in substance, after the Patrol arrived you and your crowd became inactive?

A. Immediately as soon as the sirens—in fact, when the first vehicle hit the intersection, I gave my signal for assembly, got my men together, because I was afraid the Patrol might come in shooting, and we were logical targets, with our weapons.

Q. After the Patrol arrived, certain restrictions were placed into effect which you have enumerated; is that correct?

A. Yes.

Q. They placed those restrictions?

A. The Patrol did not place these restrictions. The Patrol did nothing except secure the town.

[220] They relieved my sentries at various places throughout the town, and they cleared the traffic jam which, with their vehicles, they could do and I couldn't do, and they placed a skirmish line, armed with sub-machine guns around the crowd, moved it onto the courthouse, and allowed a man who identified himself to me as Kernshaw to address the crowd. His address was peaceful. They then—he finished. In fact, he requested the crowd to disperse, and the crowd didn't do this, and one of the Patrol officers, either Lieutenant Moody or Captain O'Rearden told them that the Patrol would remain in the skirmish line until they went home. When he said this, they started moving out.

The next morning, Sunday, the Guard placed no restrictions. The Guard thought it was going to be a picnic type of affair.

After it was necessary to move the crowd out at bayonet point Sunday night, General Henry issued this five-point order under which the city is still relatively calm and peaceful.

Q. And those restrictions still remain in effect?

A. Yes, sir.

Q. Including the restriction that no speakers are allowed there either?

A. Yes. That is correct.

Q. So, Mr. Grant, since the State Patrol arrived, since [221] the militia arrived, National Guard arrived, you say that things have been peaceful there in Clinton?

A. In the city, yes, sir.

Q. During this time, Mr. Grant—I think this is fairly obvious, but I will ask to get it in the record—Mr. Kasper was not there, was he?

A. No, sir. I did not see him.

Mr. SIMMONS: I believe that is all.

Mr. LEWALLEN: One further question.

REDIRECT EXAMINATION.

By Mr. LEWALLEN:

Q. Will you tell his Honor, please, the approximate distance from the courthouse lawn there to the schoolhouse, the Clinton High School property?

A. Oh, a quarter of a mile. Perhaps not that far. I had to run down there.

At one stage I got a report that the crowd was going to dynamite the schoolhouse. We could not spare any men, so I grabbed a sub-machine gun and took off down there——

Q. It was close enough for the crowd to surge back and forth?

A. Oh, yes, they were able to do that.

Q. They were actually separated by one city block?

A. No, not one city block; there are a couple of little [222] intersections. It is not a city block. It is a continuous area there. The courthouse, the city hall, and the high school are a cluster of government buildings right in there. There is no great distance between them.

Mr. LEWALLEN: Thank you. That is all.

(Witness excused.)

D. J. BRITTAIN, Jr., having been previously sworn, was recalled and was examined and testified further as follows:

REDIRECT EXAMINATION.

By Mr. DAVIS:

Q. Please state your name.

A. D. J. Brittain, Jr.

Q. Mr. Brittain, you are principal of Clinton High School and testified at the previous hearing; is that correct?

A. Yes, sir, that is correct.

Q. Mr. Brittain, I want to confine our inquiry and your answers to things that happened since that hearing, since the preliminary injunction was granted.

A. Yes, sir.

Q. Would you tell the Court what the situation has been in Clinton High School in regard to attendance of students [223] their attitude, and so forth, and your relationship with the parents since that restraining order was issued?

The WITNESS: What day was that order issued?

Mr. DAVIS: August 31st.

The WITNESS: That was on Friday?

Mr. DAVIS: Friday, yes.

By the WITNESS:

A. According to my records, which are approximately correct—there might be a variation of two or three—on Tuesday following Labor Day—I don't remember the exact date. I believe that is the 5th. Is that correct?

Mr. DAVIS: The 4th of September.

A. The 4th of September.

We had 266 students present. On Wednesday we had 325. Today we have 394.

Mr. SIMMONS: I didn't get that last figure.

The WITNESS: 394.

By Mr. DAVIS:

Q. What was the enrollment, Mr. Brittain?

By the WITNESS:

A. Our top enrollment was 806 students. We have had 12 transfer students, which would reduce that, I believe, to 794, if my mathematics are correct.

Q. Mr. Brittain, how many students were in school on Friday of last week?

[224] A. On Friday of last week there were approximately—again I say this is the approximate number. There were approximately 500 students in school on Friday.

Q. Of last week?

A. Of last week.

Q. Have you made an investigation of the reasons for the absenteeism?

A. We made an investigation, informal investigation, your Honor, which I would not go so far as to say is an accurate figure, but we, of course, have been concerned about the matter and wanted to know what the reason was.

So, on yesterday, Tuesday, we asked all of the students who were present—the new students that were present—to try to find out why the new students that were not present were not coming to school. Not for names. We asked for no names or anything; we just wanted to know—again, I repeat, your Honor, that this information is all of a general nature. We received this type of information.

Of 83 that were there, the parents were opposed to integration.

Fifty-eight were, for one reason or another, afraid. I do not mean, necessarily, that they were threatened, but because of all the turmoil and excitement that had taken place, they just did not want their children in school.

We had twelve of this number who transferred to another [225] school. We had 27 who were legitimately absent from sickness or from some other reason.

Two hundred we were not able to contact at all or we did not have any information about.

Q. Mr. Brittain, have you contacted any parents directly as to reasons of why children were away from school?

A. I have not made a point of going out and contacting them.

Q. I mean, have they come there to school?

A. I have had parents call me and I have had parents contact me in person at the school. I have had parents call me on the telephone and asked if I could guarantee them 100 per cent safety for their children if they came to school. I told them I certainly could not. They said they were afraid to send their children to school, for fear they might be injured in some way, not that any individual would necessarily injure a child intentionally, but that

through those crowds, and so forth and so on, there might be injury involved.

I also had three women who came into my office there very much disturbed. This was on Tuesday morning, and they informed me that they wanted their children taken out of school, because they had been told there was a bomb planted under the school which was to go off that day.

I immediately called General Henry's office, of the State [226] Guard, and they sent men over and inspected the school and found no evidence at all. Of course, I assumed there was nothing there.

Q. Was there any indication of violence or threatened violence?

A. Yes. I had a few parents tell me that they had been told that as soon as the Guard left Clinton that their houses would be dynamited if they sent their children to school. And they said, of course, they wanted me to understand they didn't want their children counted absent from school. I told them certainly if they were afraid that we wouldn't urge them to keep their children in school.

Q. Mr. Brittain, do you know of any organization among those opposed to this court order to integrate Clinton High School?

A. No, sir, I do not know of any organization.

Q. I mean, an organization by parents other than the White Citizens Council?

A. Only by rumor.

Mr. Davis: All right, sir.

You may ask him.

RECROSS-EXAMINATION.

By Mr. Simmons:

Q. Mr. Brittain, over these several days, will you retrace [227] for us the number of colored pupils that have been in attendance at the school since the other hearing in this Court?

A. I will as closely as I can, sir.

I believe that on Monday there were no students present, no Negro students—no, Tuesday. I beg your pardon. We had no school on Monday.

On Tuesday there were nine students present.

On Wednesday there were twelve students present. One left because of illness while she was at school, and on Thursday—this is only by information, since I came over here this morning—I have been informed that eleven students are in school.

Q. Last Friday, how many were there?

A. Last Friday, I would say approximately twelve. I might be off one. There might have been eleven. I don't have that figure down on here.

Q. How many colored children are enrolled in the school?

A. There are twelve Negroes.

Q. So that all of them were present last Friday, and nine of them were present Tuesday?

A. Yes, sir.

Q. Did you ascertain the reason for the absence of the other three?

A. The assistant principal did, Mrs. Moser. She in-
[228] formed me that one child was absent because of asthma. That was the child we excused the second day. Two of the children had not returned from the Labor Day vacation.

Q. Wednesday there were twelve?

A. Yes, sir, twelve came in. We excused one to go home because she was sick.

Q. Today there are eleven?

A. Yes, sir. That is the information I have. I was not in school this morning.

Q. Since the last hearing in this Court, Mr. Kasper has not contacted you in any way?

A. No, sir, he has not.

Q. In any manner, fashion, or form?

A. No, sir, he has not.

Mr. SIMMONS: That is all. Thank you.

Mr. DAVIS: That is all.

(Witness excused.)

CLYDE WOODWARD, called as a witness in behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. FISCHER:

Q. State your name.

[229] A. My name is Clyde Woodward.

Q. You are a sheriff of Anderson County, Tennessee?

A. Yes, sir.

Q. When did you assume office of sheriff of Anderson County, Tennessee?

A. Friday night at about 12:02, I believe.

Q. Where were you sworn in?

A. I was sworn in at the jail.

Mr. SIMMONS: We will concede he is sheriff.

By Mr. FISCHER:

Q. How far is the jail from the courthouse?

A. I would say approximately 75 yards from the school to the courthouse.

Q. Can you describe the condition that existed there in Clinton right after you were sworn in as the sheriff?

A. Well, immediately after I was sworn in as sheriff, I went up to the front of the courthouse. On the roadway there was a large congregation of people gathered there.

Q. What were those people doing?

A. Well, they were just milling around there, more or less. They were out in the road. At the road, they were kind of congested.

Q. Did you see any acts there of destruction of property, or violence?

[230] A. Yes, sir, I did.

Shortly after I went up there, the traffic stopped at the traffic light down there. I noticed several people running up to a vehicle, around the side of it, grabbed it, and attempted to turn the car over. It seemed that was what they were trying to do.

Q. Did you know the people in that vehicle?

A. No, sir, I did not.

Q. Can you tell us whether they were Negroes or white people?

A. I just merely had a glance at them. I think they were colored people. I immediately ran to the car.

Q. Sheriff, how long did you remain there that morning or that night?

A. Oh, I expect I stayed there—I would say approximately an hour.

Q. What was the condition of the crowd during that time?

A. Well, at that time they were out in the road, blocking the road. I went up along the front there where they were at, and talked to them and asked them to move back off the road, told them they were doing wrong, they could not succeed in their cause in acting the way they were trying to do it, then I came over to the drug store over there. Apparently most of them kind of followed me over.

[231] A lot of people told me that they would go home, that they were glad to see me there. They didn't know I was the new sheriff. I told them who I was, and they seemed to follow me over to the drug store. I walked over on that side over there.

Q. Any more violence that night?

A. No, there wasn't any more that night.

Q. When did you get to Clinton that night?

A. I came down there—I expect it was around 11:00 o'clock.

Q. Did you see any violence before then?

A. No, sir, I didn't. I went straight down to the jail.

Mr. Fischer: I believe that is all.

CROSS-EXAMINATION.

By Mr. Simmons:

Q. Mr. Woodward, did you request the State for help in this situation?

A. Yes, sir, I did.

Q. Whom did you make the request of?

A. Well, I made the request of the Governor.

Q. Why did you make the request for additional police help?

A. Well, I felt that the situation was beyond my control, [232] that I couldn't handle it. We only had about eight men there, my staff, and I felt like we couldn't do anything about it. I felt it was my obligation to call for help.

Q. After the State Patrolmen arrived——

The WITNESS: I beg your pardon?

Q. After the State Patrolmen arrived, did you have any difficulty then in Clinton?

A. Well, no sir. Not then. They taken over. I was with them. I came with them.

Q. Now that the State National Guard have arrived, is there any difficulty in Clinton?

A. Well, I would say there have been, yes.

Q. Sir?

A. Yes, they have had difficulty.

Q. Is there any difficulty there at the present time?

A. I couldn't tell you. I am not there right now.

Q. When were you there?

A. I left there approximately an hour ago.

Q. An hour ago was there any difficulty?

A. No, sir, not at that time, there wasn't.

Q. Everything was peaceful and quiet in Clinton, Tennessee, an hour ago?

A. Yes, sir, when I came through there. As far as I [233] know, yes, sir. I didn't see anything wrong.

Q. Now, Mr. Woodward, since you have been in office, has Mr. Kasper been there, or have you seen Kasper there?

A. No, sir, I have not seen him.

Q. Do you know Mr. Kasper?

A. I do not.

Q. So, you don't know of your own knowledge whether he participated in any of this, or do you?

A. Well, I did come down to Clinton at one time. I remember that he was speaking on the courthouse steps there.

Q. How many other speakers have you seen in Clinton during the past month?

The WITNESS: In the past month?

Q. In the past two weeks, I mean.

A. Well, I would say I have seen maybe two or three besides him.

Q. Have you been there in Clinton at night around in front of the courthouse?

A. Well, I did make it a point one night to come down there.

Q. And speakers were on hand that night?

A. The night I am referring to is the night this gentleman right here was speaking, Kasper. That was before I [234] took office.

Q. Any other speakers that night besides Kasper?

A. I didn't hear anyone else, didn't see anyone else.

Q. Is that the only time you heard a speech from him there at the courthouse?

A. No, sir, it is not.

Q. How many other people have you heard make speeches while you were present there at the courthouse?

A. Well, I know of about two more persons.

Q. Two more?

A. Yes, sir.

Q. Is that all?

A. Yes, sir.

Q. By common knowledge, you know there have been dozens of them, don't you?

A. Well, I have heard about them, yes, sir, but I wouldn't say "dozens".

Q. There is no speechmaking there now, however?

A. No, sir, not since the troopers came in there they haven't been making any speeches.

Q. Since the troopers came in there, there has been no speechmaking?

A. Not now, no, sir——

Q. Well, have you——

[235] A. (Continuing) —with the exception the Highway Patrol the night they came in, they were making speeches there.

Mr. SIMMONS: That is all.

Mr. FISCHER: That is all.

(Witness excused.)

Mr. FISCHER: That is our case, your Honor.

The COURT: All right, sir.

[243] The COURT: Now, gentlemen, is there anything further from any person connected with this litigation?

Mr. SIMMONS: Nothing further for the respondent.

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No. 13,046

United States Court of Appeals

FOR THE SIXTH CIRCUIT

JOHN KASPER, *Appellant*

v.

D. J. BRITTAIN, JR., J. M. BURKHART, W. B. LEWALLEN, SIDNEY DAVIS and WALTER E. FISCHER, *Appellees*

No. 1555, Civil Action

Appeal From the United States District Court for the Eastern District of Tennessee, Northern Division.

[redacted] APPENDIX FOR APPELLANT

J. BENJAMIN SIMMONS,
1025 Vermont Avenue, N. W.,
Washington 5, D. C.,
Attorney for Appellant.

APPENDIX.

No. 1555, Civil

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

JOHEATHER MCSWAIN ET AL.
Plaintiffs

VS.

COUNTY BOARD OF EDUCATION OF ANDERSON COUNTY, TENNESSEE, ET AL., *Defendants*

Relevant Docket Entries.

8/29/56—Petition of D. J. Brittain, Jr., J. M. Burkhart, W. B. Lewallen, Sidney Davis and Walter E. Fischer
8/29/56—Temporary Restraining Order
8/30/56—Petition for Contempt
8/30/56—Affidavit of James Loggans
8/30/56—Order for Attachment
8/30/56—Order of hearing on Petition for Injunction, Temporary Restraining Order and Order to Show Cause
8/31/56—Judgment: John Kasper Sentence
9/ 6/56—Temporary Restraining Order
~~9/ 6/56—Motion for New Trial~~
9/ 6/56—Original of Court Reporter's transcript of Opinion of Court on Temporary Restraining Order, and Order to Show Cause, issued August 29, 1956
9/ 6/56—Order of Hearing of September 6, 1956
9/ 7/56—Notice of Appeal
10/ 8/56—Consent Order extending time for filing Record on Appeal
10/25/56—Court Reporter's transcript of Opinion of Court of September 6, 1956

11/ 2/56—Original of Transcript of Testimony—Motion for Preliminary Injunction, Motion to Show cause for Contempt, and Permanent Injunction—August 30, 31, and September 6, 1956

(Filed August 29, 1956)

Petition

The petitioners are D. J. Brittain, Jr., Principal of Clinton High School, Anderson County, Tennessee, J. M. Burkhart, Member of the County Board of Education of Anderson County, Tennessee, W. B. Lewallen, Sidney Davis, and Walter E. Fischer, all citizens and residents of Anderson County, Tennessee, all of whom respectfully show to the Court:

I

That D. J. Brittain, Jr., was the principal of Clinton High School in Anderson County, Tennessee, when the cause in which this petition is filed was first begun, and that he still remains and is at the present time the principal of Clinton High School, Anderson County, Tennessee, and was and is a party defendant in Cause No. 1555 in the United States District Court for the Eastern District of Tennessee, Northern Division. That J. M. Burkhart was a member of the County Board of Education of Anderson County, Tennessee, when the cause in which this petition is being filed was begun, and that he is still a member of the County School Board of Anderson County, Tennessee, and was and is a defendant in Cause No. 1555 in the District Court of the United States for the Eastern District of Tennessee, Northern Division.

That Sidney Davis and W. B. Lewallen are attorneys at law in the Town of Clinton, Tennessee, and that they were employed by the defendants in Cause No. 1555 in the District Court of the United States for the Eastern Dis-

trict of Tennessee, Northern Division, to resist the efforts of Negro children entering Clinton High School in Anderson County, Tennessee. That as said attorneys and as citizens of Tennessee and the United States, they request permission of the Court to be petitioners in this cause.

That Walter E. Fischer is an attorney in the Town of Clinton, Tennessee, and that he is a citizen and resident of Anderson County, Tennessee, and of the United States and that he is an Assistant Attorney General for the Nineteenth Judical Circuit of the State of Tennessee, and that he is interested in maintaining respect for the laws of Tennessee and the United States and respect for the District Court and the Supreme Court of the United States, and he requests permission to be allowed to be a petitioner in this cause.

II

That in this cause the Judge of this Honorable Court handed down an opinion in which the Court said, "It is the opinion of this Court that desegregation as to high school students in that county should be effected by a definite date and that a reasonable date should be fixed as one not later than the beginning of the fall term of the present year of 1956." Said opinion was filed on January 4, 1956, and the petitioners, D. J. Brittain, Jr., and J. M. Burkhart, were apprised of that fact, and in compliance with the opinion of this Honorable Court, Clinton High School was integrated at the fall term of 1956.

That during the spring of 1956, the petitioner, D. J. Brittain, Jr., in attempting to comply with the orders of this Honorable Court registered several Negro students for entry in the Clinton High School at the fall term 1956. On August 22, 1956, the student body of Clinton High School in Anderson County, Tennessee, reported to the high school and there received their schedule and other instructions pertaining to school administration during the school term of 1956-57. Regular class sessions at Clinton High

School began August 27, 1956, and that in accordance with the orders of the United States District Court for the Eastern District of Tennessee, Northern Division, Negro students were admitted and have attended Clinton High School and are now attending Clinton High School.

III.

That on August 25, 1956, a man by the name of John Kasper, who claims to be the Executive Secretary of the White Seaboard Council of the White Citizens Council, came to Clinton, Tennessee, and brought with him a quantity of scurrilous literature or pamphlets which attack the integrity of the Supreme Court of the United States and federal courts in general. The said John Kasper met with certain radical elements of Anderson County, Tennessee, and began the organization of a movement to prevent the defendants in this cause and the petitioners along with other responsible citizens of Clinton, Tennessee, and Anderson County, Tennessee, from obeying the orders of this Honorable Court. That the said John Kasper has stated that his sole purpose of coming to Clinton, Tennessee, was to prevent the integration of the races at Clinton High School and that he had full knowledge of the orders of this Honorable Court to integrate said high school by the fall term 1956, and that he advocates and advises his radical following to ignore the orders of this Honorable Court and to do all that they can to impede, obstruct, and intimidate the principal of Clinton High School and the County School Board of Anderson County, Tennessee, from carrying out the orders of this Honorable Court in the matter. That the said John Kasper made arrangements for the painting of signs to be used by pickets at Clinton High School, and that on Monday, August 27, 1956, there were picket lines in front of Clinton High School in Anderson County, Tennessee. That on Tuesday, August 28th, and Wednesday, August

29th, there continued to be a large crowd congregating near Clinton High School, and particularly near the entrance to the school, and that on August 29th, 1956, the crowds became so large and threatening that several Negro Students were afraid to come to school and in at least one instance, a Negro child became so fearful that her parents came and removed her from the school. That the parents of some of the Negro children and also some of the white children have received threatening anonymous telephone calls because said parents were allowing their children to attend the same school. That John Kasper has been leading the movement and is leading the movement to intimidate the parents from sending their children to Clinton High School both in the Negro race and in the White race. That on August 28, 1956, the crowd of people, agitated by the propaganda of John Kasper, have actually attacked at least one Negro child. The said John Kasper has stated and is still stating to his radical following that the United States District Court for the Eastern District of Tennessee, Northern Division, had no authority to order integration of the races at Clinton High School and that that order should not be obeyed.

The petitioners allege that Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier, all of whom are citizens and residents of Anderson County, Tennessee, are the most radical followers of the said John Kasper, and that they are part of the crowd of some one hundred sixty-three persons congregated in and about Clinton High School. The petitioners allege that all of the above citizens named are actively advising the said crowd of people congregated around Clinton High School to ignore the orders of this Honorable Court and to do all they possibly can to impede the carrying out of said orders by the petitioners D. J. Brittain, Jr., J. M. Burkhart, and the other defendants named in Cause No. 1555 in the District Court of the United States for the Eastern District of Tennessee, Northern Division. All of the above named persons,

namely John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier have stated that it is their avowed purpose to close down Clinton High School and to prevent students both white and colored from attending the high school so long as the defendants in Cause No. 1555 in the United States District Court for the Eastern District of Tennessee, Northern Division, allow integration of the races at Clinton High School in Anderson County, Tennessee, in accordance with the orders of this Honorable Court and in accordance with the decision of the Supreme Court of the United States.

The petitioners allege that they have been unable to obtain the names of all of the people congregating about Clinton High School and urging disregard of the orders of this Honorable Court and who are actively attempting to prevent the petitioners from carrying out the orders of this Honorable Court, but they allege that not only John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier should be enjoined from congregating about Clinton High School in Anderson County, Tennessee, and from encouraging the people of Anderson County, Tennessee, to ignore the orders of this Honorable Court and from attempting to intimidate the students of Clinton High School, both white and colored, but that all persons who are participating with them in this enterprise and who might participate in the future in said unlawful enterprise should be so enjoined.

The petitioners file this petition under the provision of Title 18, Section 401, of the Federal Code, which reads as follows:

> "Section 401. Power of Court.—A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none others, as—
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

The petitioners allege that John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier had knowledge that this Honorable Court had issued an order to petitioners to integrate Clinton High School by the fall ferm 1956, and that by their actions in attempting to prevent, impede, and obstruct the carrying out of the orders of this Honorable Coitrt and their contemptuous attitude toward the Courts of the United States and its orders in regard to the integration of the races amounts to a contempt of this Honorable Court. The Petitioners allege that the foregoing named persons, and especially John Kasper, should be immediately attached by this Honorable Court and brought before it to show cause why the Court should not fine or imprison him, or both, for his contemptuous conduct.

The petitioners allege that John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier and other persons who join them in their contemptuous attitude toward the orders of this Honorable Court will continue to attempt to prevent and impede the petitioners from carrying out the orders of this Honorable Court in regard to integration of the races at Clinton High School unless they are enjoined from congregating around Clinton High School and from threatening the parents of both white and Negro children who allow their children to attend Clinton High School and from doing any act which would obstruct or impede the integration of Clinton High School in Anderson County, Tennessee, in accordance with the orders of this Honorable Court and the opinion of the Supreme Court of the United States of America.

IV

The Premises Considered, the petitioners pray:

1. That the petitioners W. B. Lewallen, Sidney Davis, and Walter Fischer be allowed to join D. J. Brittain, Jr., and J. M. Burkhart as petitioners in this cause.

2. That this petition be filed and that proper notice of same be given John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier, and any and all persons who join with John Kasper, Tom Carter, Max Sitles, Ted Hankins, Leo Bolton, and Mabel Currier in an attempt to obstruct or impede the carrying out of the orders of this Honorable Court in regard to integration at Clinton High School in Anderson County, Tennessee.

3. That an injunction issue enjoining John Kasper, Tom Carter, Max Sitles, Ted Hankins, Leo Bolton, Mabel Currier, and any and all persons who might join with said persons in obstructing or impeding the carrying out of the orders of this Honorable Court to integrate the races at Clinton High School in Anderson County, Tennessee, and further enjoining said persons from doing any act to obstruct or impede by intimidation or oppression or by the gathering in large groups in and about Clinton High School in Anderson County, Tennessee, to prevent petitioners from carrying out the orders to integrate the races at Clinton High School in Anderson County, Tennessee, as indicated in an opinion by this Honorable Court filed January 4, 1956.

4. That the Court issue an attachment for the body of John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier, requiring said persons to appear before the Court and show cause why they should not be held in contempt of the orders of this Honorable Court and fined or imprisoned, or both, for their contemptuous conduct as set out in this petition, and that said persons be required to make bond for their appearance before your Honor.

5. That at the hearing of this cause, an injunction issue permanently restraining John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, Mabel Currier, and any other persons from congregating in front of Clinton

High School for the purpose of obstructing or impeding the petitioners from integrating the races at Clinton High School in Anderson County, Tennessee, in accordance with the orders of this Honorable Court and the decision of the United States Supreme Court.

6. That petitioners have such other and further relief, including general relief, as Your Honor deems them entitled to.

This is the first application for extraordinary process in this cause.

(Filed August 29, 1956)

Temporary Restraining Order

In this cause it appearing from sworn petition of D. J. Brittain, Jr., J. M. Burkhart, W. B. Lewallen, Sidney Davis and Walter E. Fischer that John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton and Mabel Currier and others whose names are not known by the petitioners at this time, are hindering, obstructing, and interfering with the carrying out of a memorandum order issued by this Court on January 4, 1956, in that among other things, they have requested and urged the principal of the Clinton High School and the members of the County School Board of Anderson County to refuse to carry out the aforesaid integration order of the Court; that they have formed and caused to be formed picket lines in front of Clinton High School of Anderson County and on August 28 and 29, 1956, caused a large crowd to form near the entrance to Clinton High School, and threatened and caused to be threatened several of the Negro students attending said high school, causing them in at least one instance to become afraid to attend school, and causing the parents of the students to become frightened and alarmed, one of whom caused a child to be removed from school; that anonymous letters

have been written to parents of the students threatening them for permitting their children to attend school; that John Kasper has been one of the leaders in what appears to be a concerted movement to intimidate the parents, or some of them, who are sending their children to school, in an effort to prevent a continuation of school attendance; that on August 27, 1956, a crowd of people agitated by John Kasper attacked one of the Negro children of the school; that Kasper stated on various occasions that the Court had no authority to issue the aforesaid order of desegregation in the Clinton High School, and that it should not be obeyed.

It further appearing to the Court that the unlawful conduct of Kasper and the other named parties herein will continue unless a restraining order is issued prohibiting such acts, words, and conduct, and that if continued complainants will suffer immediate and irreparable injury, in that the Clinton High School will not continue to operate in an orderly manner and some of its students may suffer physical harm;

It is ordered and decreed by the Court that the aforementioned persons, their agents, servants, representatives, attorneys, and all other persons who are acting or may act in concert with them be and they hereby are enjoined and prohibited from further hindering, obstructing, or in any wise interfering with the carrying out of the aforesaid order of this Court, or from picketing Clinton High School, either by words or acts or otherwise.

It is further ordered that the aforementioned parties appear before this Court in the Federal Court House, Knoxville, Tennessee, at 1:00 o'clock p. m. on Thursday, August 30, 1956 and show cause why a preliminary injunction should not be issued.

This temporary restraining order is granted without notice to Kasper, Carter, Stiles, Hankins, Bolton, and Mabel Currier because of the matters hereinbefore set out and other matters of like tenor set forth in the complaint.

and because it has been made to appear to the Court that immediate action is necessary to prevent possible harm to the students of Clinton High School.

August 29, 1956.

ROBT. L. TAYLOR
Judge

(Filed August 30, 1956)

Petition for Contempt

The petitioners, D. J. Brittain, Jr., J. M. Burkhart, Sidney Davis, W. Buford Lewallen, and Walter E. Fischer being the same petitioners in the intervening petition filed in this cause on the 29th day of August, 1956, respectfully show unto Your Honor:

I

That pursuant to the restraining order issued by Your Honor on the 29th day of August, 1956, at 6:07 p.m. at Your Honor's offices and chambers in the Federal Court House Building in Knoxville, Tennessee, the defendant, John Kasper, one of the defendants named in said restraining order, was duly served with said restraining order by the United States Marshall while the defendant was on the Court House steps or within the Court House building within the Town of Clinton, Tennessee, at approximately 7:45 p.m. on the 29th day of August, 1956.

II

Immediately upon receiving the aforesaid restraining order from the Marshall of the United States District Court, the said defendant, John Kasper, immediately stepped outside of the Court House door in the Town of Clinton, Tennessee, where a large crowd of approximately eight hundred to one thousand people had gathered as per

prearrangements made by the defendant, John Kasper, and announced by him during the preceding hours of the day, and the said John Kasper began to address the crowd. The defendant looked at the restraining order in front of the crowd while standing on the Court House steps and said, "I have just been served with an injunction from the Federal Court." "We will now find out who our enemies are." He then proceeded to read the names of the petitioners. He called out the name of the petitioner, D. J. Brittain, Jr. He then called out to the crowd assembled, "He is our enemy." "We must get him." "I will not allow your children to be deprived of an education because a weak-kneed man like Brittain refuses to push those niggers out of school." While addressing the crowd, the defendant, John Kasper, further stated, "I will stay here until those niggers are out of Clinton High School." The petitioners further allege and show to the Court that the defendant Kasper then proceeded to tell his audience that those persons not specifically named in the restraining order could go ahead with their activities over at the Clinton High School. He further stated that the Federal Courts could serve all sorts of restraining orders on them, but that they did not have to obey said restraining orders unless they wanted to.

III

Petitioners further show to the Court that the defendant Kasper, on the morning of August 30th at approximately eight o'clock a.m., appeared in front of the high school grounds in the Town of Clinton, Tennessee, remaining some two hundred feet away from the main entrance door of said high school and standing apart from the large gathering or group of persons gathered there, proceeded to stop individuals walking up and down the street and converse with them in the general locality where large groups were gathered. The petitioners allege and show to the Court that the defendant Kasper's presence was de-

signed, on this occasion, to further violate the orders of this Honorable Court. The petitioners aver that all of the above acts and conduct on the part of the defendant Kasper were in direct violation of the orders of this Honorable Court; and that his conduct was in willful disregard of the order of this Court; and that the said defendant, John Kasper, is guilty of a criminal contempt of Your Honor's Court, under Title 18, Section 401, Subsection 3, of the United States Code Annotated.

The petitioners therefore pray that Your Honor issue an order of arrest for the person of John Kasper for criminal contempt of the orders of this Honorable Court, and that he be brought before Your Honor instanter to answer for his aforesaid contempt in accordance with law.

The petitioners further pray that they be allowed to file this petition for contempt against the defendant, John Kasper, along with any accompanying affidavits attached thereto.

WALTER B. FISCHER
W. B. LEWALLEN
SIDNEY DAVIS
D. J. BRITTAIN, JR.

(Filed August 30, 1956)

Affidavit of James Loggans

STATE OF TENNESSEE }
COUNTY OF ANDERSON }

JAMES LOGGANS, being duly sworn before the undersigned authority, makes oath as follows:

That he is thirty-six years of age and is a citizen and resident of Knox County, Tennessee. That he is the news editor of The Clinton Courier-News, located in the Town of Clinton, Tennessee. That he has been on the scene during most of the daylight and part of the night hours

since the opening of the Clinton High School on August 27th up until the time of the making of this affidavit on this the 30th day of August 1956 at 9:30 a.m. That on August 28th, in the Court House in Clinton, Tennessee, the affiant interviewed the defendant John Kasper, and the defendant John Kasper told the affiant that he "would stay right here until the Principal, D. J. Brittain, and the School Board resigns if necessary." Affiant further states that the defendant Kasper further told him on this occasion that he planned to remain here, help the fellows on the picket line, keep on organizing and distributing legal literature, and planned to have a rally here tonight or tomorrow. The affiant further makes oath that the defendant Kasper's attorney inserted the words "legal literature." Affiant further makes oath that the defendant Kasper told him his age was twenty-six and that his birthplace was Camden, New Jersey. Affiant further makes oath that the defendant Kasper told him that he organized this White Citizens Council on June 5, 1956.

Affiant further makes oath that he was present at the Court House in the Town of Clinton, Tennessee, on August 29th at approximately 7:45 p.m., when the United States Marshall served an injunction on the defendant, John Kasper. Affiant further stated that the defendant came out on the steps of the Court House and announced to the crowd that an injunction had been served on him, held it up before the crowd and stated that he would have something to say about it later on. That the defendant then started on various harangues concerning the Constitution, Negroes, or "niggers", and others. The defendant further stated that the people could go ahead and continue their activities here as they did Monday, Tuesday, and Wednesday if these persons are not specifically named in this order. The defendant further stated, "I may not participate in these activities further, but I will remain here." The defendant then further made personal attacks upon the petitioners in the petition as named and

said, "I will not allow these children to be deprived of an education because Brittain refuses to push those 'niggers' out of school." Kasper further stated, "I will stay here until those niggers are out of Clinton High School." During the defendant's tirade, he further stated, "The Federal Court can file every kind of injunction and enjoin you, but as long as that school is there, and so forth, no injunction can force you to do something you don't want to do." Affiant further states that the defendant then criticized the Knoxville News Sentinel, the Knoxville newspaper, and the Clinton Courier-News, and Mr. Wells, the publisher of the Clinton Courier-News personally. Affiant further states that the defendant said "I will stay here until those niggers are out of Clinton High School." Affiant further states that Kasper stated that he urged or asked the audience to join him in his council "to fight negroism." Affiant further states that the defendant Kasper then talked about the injunctive order which had been served upon him, and invited them to come to Knoxville to the hearing. That later on the defendant Kasper, however, told the audience that it is far more important for you to be here "two blocks away". Affiant further states that Kasper then stated that the "big shots will be little shots before this thing is over." Kasper further stated; "We will carry the fight on until we win, tomorrow night and every night until this is over we will be right here."

Further the affiant sayeth not.

JAMES LOGGANS
James Loggans.

(Filed August 20, 1956)

Order for Attachment

It appearing to the Court from a sworn petition for contempt by petitioners D. J. Brittain, Jr., et al. that a

temporary restraining order was issued by the Court at 6:07 p.m., August 29, 1956, restraining John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton and Mabel Currier, and all other persons who are acting, or may act, in concert with them, from impeding, hindering, obstructing, or in any wise interfering with the carrying out of an order issued by this Court on January 4, 1956, directing the school athorities of Anderson County, Tennessee, to discontinue segregation practices in the Clinton High School, and that soon after said order was served by the United States Marshal for the Eastern District of Tennessee on John Kasper, that the said John Kasper addressed a large crowd of people in Clinton in which he said to them in substance as follows: "... now we shall find out who our enemies are." He read the names of the petitioners. He called on the name of D. J. Brittain. He called out "He is our enemy. We must get him. I will not allowed these children to be deprived of an education because Brittain (Brittain is the principal of the Clinton High School and one of the petitioners herein) refuses to push those niggers out of school. . . ., I will stay here until those niggers are out of the Clinton High School. . . . those people not specifically named in the restraining order, could go ahead with their activities over at the Clinton High School if they were not specifically named in the order."

It further appears from the averments of the petition and affidavit that John Kasper at the aforesaid time and place wilfully disregarded the order of this Court and committed criminal contempt of this Court as defined by Title 18, Sec. 401, sub-sec. 3 of the U. S. Code, Annotated.

It is ordered that a writ of attachment be forthwith issued commanding the Marshal of this Court and his deputies to attach said John Kasper and have his body before this Court in the United States Courthouse at Knoxville, Tennessee, forthwith, to stand trial upon the charge of criminal contempt set out in this order and to show cause

why he should not be punished therefor and that a copy of this order be served upon the said John Kasper at the time he is apprehended.

That the Clerk of this Court will transmit to the Marshal an original and attested copy of said attachment and two attested copies of this order dated August 30, 1956.

ROBERT TAYLOR
United States District Judge

Minutes: August 30, 1956

No. 1555 Civil

JOHEATHER McSWAIN, ET AL

v.

COUNTY BOARD OF EDUCATION OF ANDERSON COUNTY, TENNESSEE, ET AL

Came the parties by their attorneys, and this cause coming on for hearing upon petition of D. J. Brittain, Jr., Principal of Clinton High School, et al and temporary restraining order, and order to show cause served on John Kasper, and petitioner's proof having been heard, and at the close of same respondent, John Kasper, made motion to quash the restraining order, which motion was overruled. It was agreed in open Court that proof on the attachment for John Kasper be heard along with the proof on the injunction. Thereupon, respondent's proof was heard in part, and the respondent, John Kasper, was placed in custody of the United States Marshal with bond fixed at $10,000.00. Thereupon, the hour of adjournment having arrived, Court was adjourned until Friday morning, August 31, 1956, at 9:00 A.M.

Minutes: Friday, August 31, 1956

Court Met Pursuant to Adjournment
Present and Presiding
THE HONORABLE ROBERT L. TAYLOR, *Judge*, etc.

No. 1535 Civil

JOHEATHER MCSWAIN, ET AL

v.

COUNTY BOARD OF EDUCATION OF ANDERSON COUNTY, TENNESSEE, ET AL

Came the parties by their attorneys, and this cause coming on for further hearing, the respondent's proof was heard, petitioner's rebuttal proof was heard, respondent's rebuttal proof was heard, and argument of counsel, and the Court having fully considered the case, announced findings of the Court as follows:

It is the judgment of this Court, and the Court concludes from the proof in this case, that the restraining order was properly issued, and it is the further judgment of this Court, and the Court so holds, that the temporary restraining order be continued in effect in the form of a preliminary injunction until September 6, 1956, at 1:00 o'clock P.M., at which time the Court will hear all parties on the question of making the preliminary injunction permanent.

The Court further finds on the contempt charge against John Kasper, that John Kasper is GUILTY of contempt of this Court as defined by Title 18, Section 401, Sub-Section 3 of the United States Code annotated.

Judgment and Commitment

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

No. 1555 Civil

IN THE MATTER OF:

JOHN KASPER,

Contempt Proceedings.

Judgment and Commitment

On this 31st day of August, 1956, came the attorney for the petitioners, D. J. Brittain, Jr., J. M. Burkhart, Sidney Davis, W. Buford Lewallen, and Walter E. Fischer, and the defendant, John Kasper, appeared in proper person and by attorney

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty, of the offense of wilfully violating the provisions of the temporary restraining order issued by this Court at 6:07 P. M. on August 29, 1956 as charged in the writ of attachment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged of criminal contempt of this Court.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR from and after this date.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Mar-

shal or other qualified officer and that the copy serve as the commitment of the defendant.

ROBERT TAYLOR,
United States District Judge.

BYRON POPE,
Clerk.

Filed Sept. 6, 1956

Motion for a New Trial

Comes now the respondent John Kasper by his counsel and moves the Court to award said respondent a new trial respecting the Petition for a temporary restraining order; the temporary restraining order; the order for attachment and judgment of conviction for contempt for the following reasons:

1. The findings of the Court were contrary to the weight of the evidence.

2. The findings of the Court were contrary to law.

3. That the proceeding with respect to the Order for Attachment constituted a denial of due process of law.

4. And for such other and further reasons as may be advanced at the time of hearing.

J. BENJAMIN SIMMONS
J. Benjamin Simmons
901 - 16th Street, N. W.
Washington 6, D. C.

Opinion of the Court on Temporary Restraining Order Issued August 29, 1956, at 6:07 P.M. and Order to Show Cause

August 31, 1956.

DECISION

THE COURT: This matter is before the Court on account of continuing a temporary restraining order issued at 6:07 p.m. on the 29th day of this month, enjoining Frederick J. Kasper and four or five other citizens from impeding, obstructing, and interfering with the members of the Board of Education of Anderson County from carrying out an order made by this Court on January 4, 1956.

The second question for consideration is on the attachment order issued on August 30, 1956, directing the United States Marshal to attach the body of respondent Kasper and bring him forthwith before the Court to stand trial upon the charge of criminal contempt set out in the aforementioned order, and why he should not be punished therefor.

At the time the temporary restraining order was issued, notice was given to the defendants to appear in this Court at Knoxville at 1:00 o'clock p. m. on yesterday, the 30th day of August, to show cause why this preliminary restraining order should not be converted into a preliminary injunction so as to enjoin the resporadent and all others who may be acting in concert with them, if any, from interfering with the school authorities of Clinton High School in carrying out the aforementioned order of January 4, 1956.

Respondents appeared yesterday in person and by counsel; that is to say, the respondents who were served in person, and there were three of them, as the Court understands also appearing by competent counsel, two of whom live and practice their profession in this area, and another in Washington, in the District of Columbia.

Counsel for the respondent at the outset asked that the motion for preliminary injunction be passed to a later

date, which for good reason in the opinion of this Court, was denied. Thereupon, motion was made to pass the contempt phase of the lawsuit to a later date, and counsel was advised in detail that the respondent Kasper would be given time to answer the charges against him in writing, if he so desired, and be given further time, if he desired, to prepare his defense.

Counsel at first indicated that he wanted a hearing on the action delayed, to which the Court readily acceded.

In the course of the trial, counsel announced that it was his preference and the preference of Kasper to try the contempt proceeding along with the motion for preliminary injunction; and without objection by these petitioners, the Court agreed. Accordingly, proof has been introduced during this proceeding on yesterday and today relative to these two questions, namely, shall the Court vacate the temporary restraining order, or shall he continue it in effect in the form of a preliminary injunction?

Second, did the respondent Kasper wilfully violate the order issued on August 29, 1956?

At the outset, a word should be said about the history of this litigation, which will be more or less a repetition, in view of the statements of counsel made in response to questions by the Court during the trial.

As indicated, the order of January 4, 1956, directed the school authorities of Anderson County to carry out the program of integration within the framework laid down by the Supreme Court of the United States in what has been referred to throughout this litigation as the Brown case, in 1954.

In that connection, without referring too much to the aforementioned order of this Court, it said:

> "It is the duty of this Court to comply with the clear mandate of the Supreme Court. The holding Court, as applied to this case, requires adoption by school authorities of Anderson County of a program

of integration that will expeditiously permit the enrollment of negroes of high school grade to the high school of that county. The Supreme Court said, in substance, that the school authorities should make a 'prompt and reasonable effort toward that objective'.

"The record here indicates that the Anderson County school authorities have had this problem under consideration from time to time, apparently in good faith, but have as yet taken no positive action in the way of discontinuing segregation.

"It is the opinion of this Court that desegregation as to high school students in that county should be effected by a definite date and that reasonable date should be fixed as one not later than the beginning of the fall term of the present year of 1956."

Following that order, as appears from the proof in this case, the school authorities, to their credit, in good faith authorized the enrollment of colored students in the Clinton High Schools of Anderson County. The proof shows that approximately 15 colored students enrolled in that school out of a number of some 750 to 850 students, and 12 of whom have been attending school at that school since the beginning of this school year, with the possible exception of some interruptions caused by the activities of Kasper and others.

This record shows that Kasper came into the area of the school last Saturday, or around August 25th. Up to that time, the school had been getting along reasonably well with, I assume, people holding various and different opinions about whether negro children should attend with white children, but that was not the question and is not the question in this suit, for the reason that the highest judicial authority under this government has said they had and have the right to attend that high school.

The proof is that Kasper talked to various people

about the negroes attending school, that he made speeches, beginning on Monday, August 27th, and continuing through Tuesday, August 28th, the effect of which was to urge the school officials of Anderson County, particularly the officials of Clinton High School, and more particularly, Mr. Brittain, to refrain from complying with the order of this Court which was issued in compliance with an order of the Appellate Court of this Circuit, namely, the Sixth Circuit, issuing their order in compliance with the holdings of the Supreme Court of the United States.

The activities of Kasper continued and became so pronounced that Mr. Brittain and others filed a petition with this Court on August 29th, charging that this Court's order was being violated in that respect set out in that petition.

The petition was presented to the Court in Chambers, and after consideration, the order of August 29th which has been referred to as the preliminary restraining order, was issued.

What has been said is sufficient to show that the order of this Court was not only being violated but was being violated and was being ignored, and continued to be violated up until the very minute the order was issued, namely, seven minutes after six o'clock p. m., on the indicated date.

It is the judgment of this Court, and the Court concludes from the proof in this case, that the order was properly issued, and it is the further judgment of this Court, and the Court so holds, that it shall be continued in effect in the form of a preliminary injunction until September 6, 1956, at 1:00 o'clock p. m., at which time the Court will hear all parties on the question of making the preliminary injunction permanent.

This brings us to the second phase of the lawsuit, which relates to the attachment writ issued on August 30, 1956. The proof shows that this preliminary injunction writ was served on Kasper while he was making his speech near or in front of the court house in Clinton on August

29, 1956, between 7 and 8 o'clock p. m.—as the Court recalls, around 7:45 was the exact hour.

Kasper, through his counsel, says he is not guilty of the charge of criminal contempt, first, because the Court is without jurisdiction to issue the preliminary writ, and that the attachment writ following issuance of the preliminary injunction writ was a nullity.

Counsel, in argument stated politely that this was a novel proceeding insofar as he was possessed of knowledge relating to such matters, and in that connection stated that it was incongruous for the parties who were defendants in the original suit in this Court of McSwain and others, Number 1555 on the docket, should thereafter be permitted by this Court to come in by petition as complainants and complain against Kasper and others. In a word, counsel says that is unknown to the forms of regular and established procedure in the federal court or in other tribunals.

Counsel's argument would be more persuasive in that respect if this were a civil contempt. There is a distinction, althought in some cases a differentiation between civil and criminal contempt is very narrow but, as indicated, there is a well defined distinction between the two. Civil contempt is used ordinarily not to punish any person but to help some other private litigant where another private litigant has done wrong. For example, if a private litigant comes on the yard of his neighbor and that neighbor gets an injunction to put him off and he doesn't get off, the court under those circumstances ordinarily would have the right to order that neighbor, or direct him, to get off the other neighbor's yard or place him in jail until he complied with the court's order. As indicated, that is not punishment; it is an effort to redress a private wrong done to a private citizen. On the other hand, the purpose of the criminal contempt, the kind that is involved in this proceeding, is to protect the public and punish wrong-

doers in order that they may be deterred from doing like things in the future, and in order that those who may have potential thoughts of doing the same things, to prevent them from so doing.

It is criminal contempt we are considering in this case. In criminal contempt it is not necessary for any pleadings to be filed in the Court; it is only necessary for some reputable party or parties to make known to the Court that a prima facie case exists that the Court's order is being violated. Under those circumstances, it is the duty of the Court to order the violators brought before the Court and explain to him in open Court the charges against him and ask him why he should not be punished for the alleged contempt. Of course, that contemplates due process of law. That contemplates giving the accused person time to answer, time to make a defense, and the benefit of all other regulations and standards that go with due process of law in this country.

So that the petitioners in this case are before this Court with the permission of this Court saying that this defendant and others disobeyed the order of this Court, and the Court permitted them, in the nature of officers of the Court, to appear in this proceeding. It is the opinion of this Court that the procedure followed in citing Mr. Kasper to appear here was regular and proper.

Another point is that the order was not violated for the reason that that which Kasper did, he had a right to do under the First Amendment to the Constitution of the United States. It is said he had that right for two reasons: That he did nothing more than to express his views and that under that provision of the Constitution every citizen has a right to express views on all subjects.

Second, it is said that under that Amendment, he had the right to assemble along with these other people, that the right was guaranteed him, and that he was merely exercising that right.

Now, as to the first contention, it is the view of this Court that the First Amendment is not a license or privilege to Kasper or any other citizen to violate an order regularly issued by the Court. It is the further view of this Court that it is not a privilege of Kasper or any other citizen, along with others, to urge that the school authorities refrain from complying with the order of this Court. Freedom of assemblage does not give rights to people to violate orders of the Court issued under regular court procedure.

What has just been said relates to legal defenses which have been made and argued with fervor by counsel for Mr. Kasper.

We come now to the defense on the merits of the lawsuit, and that is that respondent Kasper did not wilfully intentionally violate the order of this Court that was issued on August 29, 1956. That presents a question of fact to be determined by the Court from the evidence that has been adduced from the witness stand during yesterday for the greater part of the afternoon and this morning.

Kasper says he did not know about the lawsuit from which the litigation now under consideration stems; that he simply read in the papers that Clinton High School was permitting negro students to attend that school. In that connection, he said he dedicated his life to the proposition that integration must not and shall not become an accomplished fact in these United States. It is with that brief background that Kasper says that he went to Anderson County. Mr. Kasper has the right, of course, like other citizens, to express his views on subjects, but that is not what this case is about, and Mr. Kasper does not have the right to [illegible]fully violate the order of this Court.

One, among many unusual matters that have appeared from the proof in this case, is that Kasper was dissatisfied with the order of this Court being put into execution, and he told the school authorities, particularly Mr. Brittain. Brittain, like the good citizen he is, told Kasper that he

was simply a law abiding citizen undertaking to comply with the law of the land. That didn't satisfy him. It is the proof in this case that he started a campaign to oust this man Brittain from a position to which he was elected by the duly constituted authorities of Anderson County, which he has performed, so far as this Court knows, with credit. It is unusual for a man from Washington or any other state to come into one of the counties of Tennessee and undertake to put out one or more of the county officials because of their efforts to comply with the law.

This Court observed Brittain on the stand. He has been harrassed in the performance of his duty. He said he received anonymous telephone calls one evening in the early evening and up to around five o'clock in the morning. That is not right. His appearance while on the witness stand was that of a man who was devoted to duty, and so Kasper, and others who are not even before this Court, from the proof in this case, undertook to get Mr. Brittain out because he was doing his duty. That was Kasper's object, stated more than once, and he was going to stay in Anderson County until the negroes were thrown out or put out.

He says he didn't know about this restraining order. The Court is of the opinion that he did. In that connection, Kasper is not an illiterate man; he is an educated man. He holds a degree from one of the great universities of this country. He is a highly educated man. In spite of this preliminary restraining order which the Marshal and his deputies say was read to him, he goes on with his speech before an audience of 1,000 to 1,500 people, telling them, in effect, that this order of this Court is not the law and that if they don't believe in it, they don't have to comply with it; that there was a greater law than the orders of Federal Court, and that was the law of the people. That argument, which the Court is not interested in in this proceeding, if carried to the logical conclusion, simply means that every citizen dissatisfied with an order issued by this

Court—and as indicated here today, half of the people are, because all courts have to decide against one person or the other, and that person who is dissatisfied will say, "That court has no right to do that I will pay no attention to it". If that philosophy were to prevail we would not, as the Court sees it, be governed by law.

Kasper has a point, which is that people's rights, if they are dissatisfied with the law, or a majority of them, they have a perfect right to do everything within their power without trespassing upon the rights of others to get that law repealed, but they are required to do that in an orderly manner.

It is the judgment of the Court, and the Court finds from the proof in this record, that respondent Kasper wilfully disregarded and violated the order of this Court issued on August 29, 1956, and that he is guilty of contempt of this Court as defined by Title 18, Section 401, Sub-Section 3 of the United States Code annotated.

Would you stand up, Mr. Kasper.

* * * * * * * * *

THE COURT: It is the judgment of this Court—

Do you have anything further to say?

DEFENDANT KASPER: No, sir.

THE COURT: It is the judgment of this Court that you be confined to some institution to be designated by the Attorney General of the United States for a period of one year for wilful contempt of this Court. You are in the custody of the United States Marshal.

Filed Sept. 7, 1956

Notice of Appeal

Notice is hereby given that John Kasper, respondent, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit from the final judgment entered in this

action on the 31st of August, 1956, finding him guilty of contempt of Court and sentencing him to one year in prison, and from the order of the Court overruling respondent's motion for a new trial entered September 6, 1956, and from the order of the Court making the preliminary injunction permanent entered September 6, 1956.

Signed:

J. BENJAMIN SIMMONS
J. Benjamin Simmons
Attorney for Respondent
901 Sixteenth Street, N.W.
Washington, D. C.

Consent Order Extending Time for Filing Record on Appeal

It appearing to the Court that in view of the additional time required by the Court reporter to write up the transcript of the hearings herein, the time for filing the record on appeal should be extended, and counsel having consented to the entry of this order as evidenced by their respective signatures hereon, it is by the Court this day of October, 1956,

ORDERED, that the time for filing the record on appeal be and the same is hereby extended to and including the 15th day of November, 1956.

/s/ ROBERT L. TAYLOR
Judge

Decision of September 6, 1956

DECISION

THE COURT: At the outset, the Court commends counsel for the manner in which they have argued matters which are presently before the Court. They have argued these matters in a deliberate, cautious, and considerate manner.

There are three matters before this Court at the present time. First, whether the preliminary injunction, which was issued after a hearing which lasted the greater part of two days, shall be made permanent.

Many witnesses testified in the case. Counsel on each side presented their respective positions well. The Court was of the opinion, and is of the opinion now, that the preliminary injunction was properly issued. The Court at this time reaffirms the findings and conclusions made in a memorandum opinion from the bench at the conclusion of that hearing, namely, August 31, 1956, which consists of more than thirteen typewritten pages.

The proof today shows that the school authorities have been hindered in carrying out the order of this Court referred to in this memorandum opinion, which was made on January 4, 1956.

The injunction prohibits the respondent from interfering with Mr. Brittain and his colleagues in carrying out that order.

Respondents have no legal basis in objecting to that, because that is the order of the Supreme Court of the United States, the highest judicial body in this land. It is the conclusion of the Court, and the Court finds, from the proof in the case that the injunction should be made permanent.

This brings us to the second matter that is before the Court, which is consideration of a motion for a new trial, filed by Mr. Kasper on September 6, 1956.

Decision of September 6, 1956

In support of the motion, the following grounds are urged:

First, the findings of the Court were contrary to the weight of the evidence. The Court, in the memorandum opinion which has been mentioned, discussed the evidence which was adduced at the hearing and came to the conclusion that Mr. Kasper wilfully violated the Court order which was referred to in more detail in that memorandum opinion. This Court is still of that opinion. For that reason, ground number one of the motion for a new trial is and must be overruled.

Ground number two is that the findings of the Court were contrary to law. That brings up the legal questions which were discussed in an able manner by Mr. Kasper's attorney during the hearing of August 31st, which has been supplemented by this hearing today.

The Court in the previous hearing undertook to point out the distinction between civil contempt and criminal contempt, and in that connection made it clear that in criminal contempt proceedings the accused must be fully apprised of the charges against him, and after he is so notified of the charges against him he is entitled to a reasonable length of time in which to fully prepare for a trial. That is just another way of saying that the accused, as is every citizen in the land, is entitled to due process of law under our form of government.

In the opinion of this Court, the accused in this case was tried under due process of law, and the Court is of the opinion that ground number two of the motion is not tenable. It is, therefore, overruled.

Ground number three, that the proceedings with respect to the order for attachment constitute a denial of due process of law. What has been said in relation to ground number two is applicable to ground number three, and for that reason it is necessary that the Court overrule ground number three of the motion.

The fourth and final ground of the motion is that for such other and further reasons as may be advanced at the time of the hearing. Now, in that connection, Mr. Simmons has made a very appealing argument here today in behalf of the respondent. His argument indicates a very thorough study of the procedure of law relating to due process. The Court is not able to agree with all of his conclusions. It is the opinion of the Court that the motion for a new trial should be and the same is hereby overruled.

The third matter is the question of bail. Rule 46 of the Federal Rules of Criminal Procedure, Sub-section (b) thereof, provides:

> "If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impractical to secure his presence by citation, the court or commissioner may require him to give bail for his appearance as a witness."

The Federal Rules of Criminal Procedure, Rule 46, Subsection 2 of Section 8, reads:

> "Bail may be allowed pending appeal or certiorari only if it appears that the case involves a substantial question which should be determined by the Appellate Court. Bail may be allowed by the trial judge or by the Appellate Court or by any judge thereof or by the Circuit Court justice. The court or judge or justice allowing bail may at any time revoke the order admitting the defendant to bail."

That rule was amended by the Supreme Court of the United States this year, which amendment, I believe, became effective on the first day of May, 1956. The amendment reads as follows:

"Bail may be allowed pending appeal or certiorari, unless it appears that the appeal is frivolous or taken for delay. Pending appeal to a Court of Appeals, bail may be allowed by the trial judge, by the Court of Appeals, or by any judge thereof or by the Circuit justice, to run until final determination of the proceedings in all courts. Pending appeal or certiorari to the Circuit Court, bail may be allowed by the Court of Appeals or by any judge thereof or by the Circuit Court or by a justice thereof, any court or any judge or justice authorized to grant bail may at any time revoke the order permitting the defendant to bail."

It is to be observed that the amended rule is different from the original rule. Under the original rule—frankly, Mr. Simmons, that is the rule that the Court had in mind at the time this case was tried on August 31st—the trial judge was to certify that there was a substantial legal question involved before he was justified in permitting bail. Now, as you have observed, that rule is changed. The trial judge is not required to certify that there is a substantial question involved in order to permit bail. So, under the rule as amended, the Court permits the accused bail and fixes bail at $10,000.

In that connection, the Court repeats reading of the last sentence of Rule 46, Subsection 2 of Section 8, which is:

"Any court or judge or justice authorized to grant bail may at any time revoke the order admitting the defendant to bail."

I assume that you have given the clerk notice of Mr. Kasper's appeal and you have filed formal notice of his appeal, have you, Mr. Simmons? I am not granting bail unless you will file notice with the clerk.

MR. SIMMONS: I assure you, your Honor, it will be filed.

THE COURT: I can treat it as filed?

MR. SIMMONS: Yes; your Honor. Treat it as my statement that it is going to be filed. As I understand the rules, it is to be filed by 10:30 a.m. after overruling of the motion, and I assure the Court that I intend to file.

THE COURT: All right.

MR. SIMMONS: Thank you, your Honor.

JUL
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957.

No. 315

JOHN KASPER, *Petitioner*,

v.

D. J. BRITTAIN, JR., J. M. BURKHART, W. B. LEWALLEN, SIDNEY DAVIS, and WALTER E. FISCHER, *Appellees*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. _____

JOHN KASPER, *Petitioner*,

v.

D. J. BRITTAIN, JR., J. M. BURKHART, W. B. LEWALLEN, SIDNEY DAVIS, and WALTER E. FISCHER, *Appellees*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner prays for a writ of certiorari to review a judgment of the United States Court of Appeals for the Sixth Circuit which affirmed judgment of the United States District Court for the Eastern District of Tennessee, Northern Division, finding petitioner guilty of criminal contempt of court and sentencing him to one year in the penitentiary.

OPINION BELOW

The opinion of the Court below has not yet been officially reported. Copy of the opinion and judgment are annexed hereto and printed in the Appendix.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 1, 1957 (App. No. 2a); a Petition for Re-hearing was timely filed and said Petition for Re-hearing was denied on June 27, 1957 (App. No. 9a). The jurisdiction of this court is invoked pursuant to the provisions of 28 United States Code, Section 1254(1).

QUESTIONS PRESENTED

1. The restraining order or final injunction violates the First Amendment to the Constitution.

2. The statements made by the appellant as shown in the contempt citation were all protected by Amendment I of the United States Constitution.

3. The temporary restraining order was void and petitioner could not be held guilty of criminal contempt for disobeying it.

4. The procedure followed by the trial court constituted a denial of due process of law to the appellant under Amendment V of the United States Constitution.

5. The contempt citation against appellant can not stand because it was not brought in the name of the United States and not by the real parties in interest.

6. The Circuit Court erred in permitting United States Attorneys to represent respondents as of right which prejudiced petitioner's rights.

7. The procedure followed against the petitioner constituted an improper use of the federal police power since the state police power resolved the situation.

8. The sentence of the petitioner was null and void because the District Court did not have jurisdiction over the appellant nor the subject matter.

9. The temporary restraining order and the permanent injunction violate the 14th Amendment to the United States Constitution.

10. The sentence in the instant case was grossly excessive and constituted cruel and unjust punishment.

STATEMENT OF CASE

On January 4, 1956, the United States District Court for the Eastern District of Tennessee, Northern Division, issued an injunctional order requiring the appellees in an Equity case to desegregate the high school at Clinton, Anderson County, Tennessee, by the fall term of 1956. The petitioner was not a party to that case in any way and was not an agent, servant, employee, or attorney of any of the parties to that case.

The petitioner was served with a temporary restraining order in said case on August 29, 1956, which was his first introduction to that case, while he was making a speech in front of the Clinton, Tennessee, Court House. The temporary restraining order enjoined the petitioner from hindering, obstructing, or interfering with the carrying out of a memorandum injunctional order issued by said District Court on January 4, 1956, and specifically under the temporary restraining order he was enjoined "from further hindering, obstructing, or in any wise interfering with the carrying out of the aforesaid order of this court, (January 4, 1956 order) or from picketing Clinton High School either by words or acts or otherwise." A

copy of the January 4, 1956, injunctional order was never served upon petitioner in any way and as aforesaid, he was not a party to the equity cause at the time the said injunctional order was entered.

The petitioner was found guilty of criminal contempt of Court for violating the temporary restraining order. At the time the temporary restraining order was served upon him he was required by the terms of the order to appear in the District Court at Knoxville the next day (August 30, 1956) at 1:00 o'clock p.m. to show cause why a preliminary injunction should not be issued. As he was entering the Court Room the next day (August 30, 1956) he was served with the attachment for criminal contempt.

The Court was requested to grant appellant a 24-hour continuance on the temporary restraining order hearing, which request was denied. As a result of the hearing, the Court granted the preliminary injunction and found the appellant guilty of criminal contempt of Court, and the appellant was sentenced to the penitentiary for one year. A request for bail was taken under advisement and the petitioner was kept in the custody of the United States Marshal in Knox County Jail, Knoxville, Tennessee, until bail was granted on September 6, 1956.

Subsequently, on Septemer 6, 1956, a further hearing was had respecting the preliminary injunction and the preliminary injunction was ordered to be a permanent injunction and at that time (September 6, 1956), petitioner was granted bail pending appeal in the amount of $10,000.00.

REASONS FOR GRANTING THE WRIT

1. The restraining order and final injunction violated the First Amendment to the Constitution. The temporary restraining order; the preliminary injunction, and the permanent injunction are all in the wording of the temporary restraining order and the injunction provision is as follows:

> "It is ordered and decreed by the Court that the aforementioned persons, their agents, servants, representatives, attorneys, and all other persons who are acting or may act in concert with them, be and they hereby are enjoined and prohibited from further hindering, obstructing or in any wise interfering with the carrying out of the aforesaid order of this Court (order of January 4, 1956) or from picketing Clinton High School, either by words or acts or otherwise."

In the trial court and in the Circuit Court, appellant took the position that this injunction was so broadly worded as to cut across the First Amendment of the Constitution which rendered the temporary restraining order and the permanent injunction null and void. The issue, "Does the restraining order or final injunction violate the First Amendment to the Constitution" was a point on appeal before the Circuit Court and as the Court will observe from a reading of the opinion of the Circuit Court, that Court did not decide this issue at all.

2. It was petitioner's position that the statements he made in his speech after the temporary restraining order was served upon him and as incorporated in the Order for Attachment were protected under the freedom of speech provisions of the First Amendment. This Court will notice that the trial court and

the Circuit Court went on to consider all of the activity in Clinton, Tennessee, adverse to integration as being chargeable against the petitioner and then said the sum total is not protected under freedom of speech. This was very prejudicial to the petitioner as the Court should have considered only the statements contained in the Order for Attachment because that constituted the indictment, so to speak. *Bridges* v. *California*, 314 U.S. 252, *Craig* v. *Harney*, 331 U.S. 367; *Terminiello* v. *Chicago*, 337 U.S. 1; *Thomas* v. *Collins*, 328 U.S. 331.

3. Petitioner challenged the validity of the temporary restraining order before the trial court as shown in the opinion of the trial court (Certified Record 25a). It was made a point on appeal to the Circuit Court (Question No. 5) and yet that court did not decide this issue. If the temporary restraining order is invalid because of any of the points urged challenging its validity, then petitioner cannot be guilty of violating it if the District Court did not have jurisdiction of petitioner and the subject matter. The Circuit Court held that the District Court had jurisdiction of the subject matter but did not decide the issue as to whether or not the District Court obtained jurisdiction of the petitioner. This went to the very heart of the case and was not decided by the Circuit Court. It naturally follows that if the temporary restraining order was void, then the permanent injunction is also void and petitioner's constitutional rights are being violated every day the permanent injunction is permitted to stand. See *In re Sawyer*, 124 U.S. 200; 12 A.L.R. 2d 1083-1084. Also *Giles* v. *Harris*, 189 U.S. 475, and *Williams* v. *Dalton*, 231 F. 2d 646.

There were no pecuniary or property rights alleged at issue in the litigation leading to the injunction involved here; and yet the principle is fundamental in federal courts that chancery has power only over proprietary interests. *Re Sawyer, supra; In Re Debs,* 158 U.S. 564, 593; *International News Service* v. *Associated Press,* 248 U.S. 215, 236; *Cavén* v. *Clark,* 78 F. Supp. 295.

Finally, the District Court was without jurisdiction in issuing its secondary injunction, not only because the primary injunction was invalid as a mandamus and beyond the court's power to issue as a mandatory injunction, but also because the secondary injunction, as interpreted by the Court itself, operates as an injunction against ordinary crimes and misdemeanors—whereas the point is elementary that courts of chancery cannot enjoin crimes. *Re Sawyer, supra.* The rule is subject to the single exception that the crime of "public nuisance" may be enjoined in the extent necessary to prevent continuing injuries against property. *In Re Debs, supra.* It is true that "criminal equity" was the ancient jurisdiction of the Star Chamber, but Star Chamber jurisdiction was abolished by statute in 1614. (16 Charles I, c. 10.)

4. The parent case wherein petitioner was cited for contempt was a suit begun some five years ago by certain plaintiffs against the school board of Anderson County, Tennessee, to require the enrollment of certain colored students in that formerly all-white school. That suit culminated with an order entered in said case on January 4, 1956, wherein the District Court

ordered the colored children to be admitted in the school at the beginning of the 1956 fall school term. Those minor plaintiffs were admitted to that school and all during the proceedings against petitioner they were enrolled in and attending the school and the school continuously functioned upon an integrated basis. This closed this equity case and opened it to freedom of speech. Petitioner was first introduced to the parent case when the temporary restraining order was served upon him. At the time the temporary restraining order was served upon him, the January 4, 1956, order which he is charged with violating was not served upon him and he was in no way chargeable with notice of that order. It is inherently wrong to charge petitioner with violating an order when he had no knowledge whatsoever concerning said order. Petitioner says that he has been denied due process of law by being punished for the violation of an order of which he had no notice.

Petitioner took the position that the District Court did not have jurisdiction of his person nor of the subject matter. The Circuit Court held that the District Court did have jurisdiction of the subject matter, but the court did not deal with the position taken by the petitioner that the District Court did not have jurisdiction of his person. The record shows that the petitioners for the temporary restraining order (Certified Record 2a) acted as individual citizens and not in any official capacity; therefore, they were not the proper persons to petition the court for a temporary restraining order under Rules 17, 65(b) and 65(d) of the Federal Rules of Civil Procedure, and Rule 42(b) of the Federal Rules of Criminal Procedure. The record shows that some of the same individuals who petitioned

for the temporary restraining order petitioned for the citation for criminal contempt of the petitioner (Certified Record 118). These petitioners did not have the legal capacity to petition for criminal contempt of the petitioner because that could only be done by the United States Attorney or the District Court judge, but as pointed out later in this case, the entire procedure against the petitioner was fatally defective because the United States was not a party in this procedure. The petitioner pointed out in detail to the trial court and to the Circuit Court that the aforementioned Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure were not followed; hence, the District Court did not obtain jurisdiction over the petitioner. The court will observe that the Circuit Court did not deal with these issues at all. In the Circuit Court, the petitioner cited the case of *Alemite Manufacturing Corporation* v. *Staff*, 42 F. 2d 832, wherein Judge Learned Hand clearly stated that an injunction issued by a court against a person over whom the court did not have jurisdiction was pro tanto brutum fulmen, and that aptly describes the temporary restraining order, the preliminary injunction, and the permanent injunction in the instant case. This court, in the case of *United States* v. *United Mine Workers of America*, 330 U.S. 293, outlines the procedure to be followed in citing a person for criminal contempt and cited with approval the case of *Howat* v. *Kansas*, 258 U.S. 181. In the United Mine Workers case, supra, the Court at Page 189 quoted from the Howat case as follows:

> "An injunction duly issuing out of a Court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however er-

roneous the action of the Court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case."

The Court will observe from the opinion rendered by the trial court that counsel for petitioner was bewildered by the type of procedure followed in that the procedure followed resembled a procedure for a citation for civil contempt because the United States was not a party. (Certified Record 25a)

The Circuit Court completely misconceived petitioner's position regarding a jury trial. The petitioner did not demand a trial by jury in the District Court because there was no statute under which he was entitled to a jury trial. It was the position of the petitioner that in this constructive criminal contempt case there was no occasion to deprive him of any of the protections of the Bill of Rights. In his oral argument before the Circuit Court, counsel for petitioner made the following statement:

"It is appellant's position that in a constructive criminal contempt case of this type there is no occasion for depriving the accused of any of the protections of the Bill of Rights. The case of *Nye* v. *United States*, 313 U.S. 33, supports this proposition."

In petitioner's brief before that Court, he also relied on the case of *Bridges* v. *California*; 314 U.S. 252.

In this Court's decision on June 10, 1957, involving the case of the wives who murdered their soldier husbands, Justice Black said:

"Trial by jury in a court of law and in accordance with traditional modes of procedure after an

indictment by grand jury has served and remains one of our most vital barriers to governmental arbitrariness."

These cases very well point up petitioner's position in this case. Petitioner believes that he was also denied due process of law because the trial court denied him a 24-hour continuance. The statement which counsel for petitioner made before the Circuit Court clearly summarizes the situation as follows:

> "The procedure followed by the Trial Court constituted a denial of procedural due process of law to the appellant under the Fifth Amendment. The appellant was served with the temporary restraining order at 7:45 p.m. on Wednesday, August 29, 1956, and was ordered to appear in the Federal District Court the next day at 1:00 o'clock. I represented the respondent and he telephoned me late that evening to advise me that he had been served with the restraining order and I arrived in Knoxville by plane the next day around noon. I was met at the airport by the appellant and I read the petition for the temporary restraining order and the restraining order in a taxicab going from the airport to the Court House. As we entered the Court room the appellant was served with the Criminal contempt citation. I feel strongly the Court abused its discretion in denying us a 24-hour continuance on the hearing on the temporary restraining order under the circumstances, because in a subsequent trial in the State Court where this appellant was charged with sedition and inciting to riot, 65 witnesses were called in his behalf and the jury deliberated less than one hour and acquitted him. This record shows that the appellant called no witnesses in his behalf due to the summary procedure adopted, so the Court's denial of the short continuance requested operated greatly to the

> prejudice of appellant and constituted a grave abuse of discretion."

This entire proceeding is in a fuzzy zone of the law and an attorney cannot possibly know and protect all of the possible rights of his client under this kind of pressure. It is therefore respectfully submitted that the Court should be most indulgent and review the record carefully to ascertain if the appellant's constitutional rights have been invaded because he has been sentenced to the penitentiary. In the Court's opinion (App. 7a) appears the following:

> "The contention that the procedure followed by the trial Court constituted a denial of procedural due process because the restraining order was not served upon appellant, wherefore, he could not be guilty of violating it, is simply not applicable to the facts of the record."

The appellant did not take that position and the Court is in error in making that statement. Appellant stated throughout his briefs and in oral argument that the temporary restraining order was served upon appellant around 7:45 p. m. on Wednesday, August 29, 1956, while he was making a speech in front of the Clinton Court House. The issue in that respect was that the temporary restraining order was not read to appellant; there were other witnesses who said that the temporary restraining order was read to the appeliant, so that the trial court and this Court would be justified in saying that the temporary restraining order was read to the appellant.

The Court evidently confused the position taken by the appellant on this point with the position taken by the appellant regarding the order entered in the cause

on January 4, 1956; that is the order which appellant says was not served upon him at anytime, nor in any manner was he advised of its substance. As pointed out earlier, the appellant was not a party to the equity case either directly or indirectly at that time. The statement mentioned above (in the Court's opinion) is unfair to the appellant and his counsel because it indicates to persons reading the opinion not familiar with the case that appellant took a position that was completely contradicted in the record.

5. As pointed out earlier herein, the contempt citation against petitioner was not brought in the name of the United States and it was not brought in the name of the county school board as was the situation in the case of *Brewer* v. *Hoxie School District*, 238 F. 2d 91 (C.A. 8). Since the petition for the criminal contempt citation was brought by private individuals (Certified Record 11a) and was not prosecuted by the United States so that the petitioner would have known that criminal sanctions were sought to be invoked against him, the petitioner has been denied due process of law. Criminal contempt of a federal court is an offense against the United States. *New Orleans* v. *Steamship Co.*, 20 Wall 387, 392, 22 L. Ed. 354. *Bessette* v. *W. B. Conkey Co.*, 194 U.S. 324; 48 L. Ed. 997.

6. When United States Attorneys entered their appearance as a matter of right in the Circuit Court, your petitioner filed a Motion to Strike their appearance because the United States was not a party to the case. The Circuit Court overruled petitioner's Motion to Strike without prejudice to petitioner's position in that court that the United States was not a party to the case. Your petitioner says that this was prejudicial to his rights in view of the issue that was be-

fore that court. If the government attorneys wanted to enter their appearances in the nature of amicus curiae, they should have been held to required procedures.

7. The permanent injunction issued in this case (Certified Record 31a) and the manner in which it is used is an exercise of the federal police power; however, the record in this case shows that after the state police power was called into Clinton there was no difficulty whatsoever in maintaining law and order. In the opinion of the Circuit Court the statement is made that "The Federal courts are empowered to protect constitutional federal rights even though state power may equally be so exercised" (App. 8a) is contrary to Article IV, Section 4 of the Constitution which provides that federal police power can be used in a state only upon application of the state legislature when in session, or by the Governor when the legislature is not in session. It would appear abundantly clear that if this pronouncement is permitted to stand that provision of the Constitution is rendered ineffective or meaningless.

8. The Circuit Court held that the sentence against petitioner should stand without deciding the question as to whether or not the District Court obtained jurisdiction of the appellant. The Circuit Court ignored this point of petitioner's appeal and it will be noted from the opinion rendered by the trial judge (Certified Record 25a) that the petitioner consistently challenged the jurisdiction of the trial court. The Circuit Court cites the case of *Howat* v. *Kansas*, 258 U.S. 181; *United States* v. *United Mine Workers of America*, supra; *Amalgamated Clothing Workers* v. *Richman Bros. Co.*, 211 F. 2d 449 (C.A. 6), in support

of its decision that petitioner can be punished for violation of an injunctional order even if the order "may seemingly be challenged as invalid." Those cases so hold, but in each of those cases the Court had jurisdiction of the person and the subject matter. In order for those cases to cite the position taken by the Circuit Court, the Circuit Court should have dealt with petitioner's position that the District Court did not obtain jurisdiction over the petitioner. The petitioner cited to the Circuit Court the cases of *In re Sawyer*, 124 U.S. 200, where this Court said at page 221:

> "The Circuit Court (of the United States) being without jurisdiction to entertain the bill in equity for an injunction, all its proceedings in the exercise of the jurisdiction which it assumed are null and void. The restraining order, in the nature of an injunction, it had no power to make. The adjudication that the defendants were guilty of contempt in disregarding that order is equally void, their detention, by the marshal under that adjudication is without authority of law, and they are entitled to be discharged. *Ex parte Rowland*, 104 U.S. 604; *Ex parte Fisk*, 113 U.S. 713 and *In re Ayers*, 123 U.S. 443, 507."

See also *Ex parte Terry*, 128 U.S. 289 and *Ex parte Harding*, 120 U.S. 782, all cited on page 16 of appellant's Reply Brief. See also 12 ALR 2d 1079-1080. The *Howat* case supports appellant's position.

An absolute want of jurisdiction over the subject matter or person may be urged at any stage of proceedings; even collaterally and after judgment. 21 C. J. S. 167 ff., and cases there cited.

Jurisdiction is not a matter of sympathy or favor; the courts are bound to take notice of the limitations

on their authority. *Reed* v. *United States*, 211 U.S. 529.

9. This Court in deciding the case of *Brown et al* v. *Board of Education*, 347 U.S. 483, bottomed it on the 14th Amendment; to deprive the negro children the right to enter a particular school deprives them of "equal protection of the law." The 14th Amendment contains some clear and plain words in its fifth section as follows:

> "The Congress shall have power to enforce by appropriate legislation the provisions of this Article."

Nothing is said about the judiciary enforcing the amendment and no authority is given to the executive branch to enforce the amendment. The sole power to enforce the 14th Amendment is vested in the representatives of the people (Congress) which is required to act "'by appropriate legislation." Congress has passed no legislation to enforce the Fourteenth Amendment in respect to schools. The Courts should not be placed in the position of legislating. The Courts have consistently held the 14th Amendment applies only to the states and does not apply to any private individuals. The 10th Amendment further fortifies this position.

10. The petitioner would like this Court to review this sentence in the light of the facts and circumstances in the case because it is felt that the sentence is grossly excessive.

CONCLUSION

Certiorari should be granted.

Respectfully submitted,

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PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Cause Argued and Submitted

April 9, 1957—Before: Simons, Chief Judge, McAllister and Miller, JJ.

This cause is argued by J. Benjamin Simmons for appellant and by Donald B. MacGuineas for appellees and is submitted to the court.

Judgment

(Filed June 1, 1957)

Appeal from the United States District Court for the Eastern District of Tennessee.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Opinion

(Filed June 1, 1957)

No. 13046

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN KASPER, *Appellant*,

v.

D. J. BRITTAIN, JR., ET AL., *Appellees*.

Appeal from the United States Court for the Eastern District of Tennessee, Northern Division

Decided June 1, 1957

Before SIMONS, Chief Judge, MCALLISTER and MILLER, Circuit Judges.

SIMONS, Chief Judge. The appellant was found guilty of a criminal contempt by the district judge in wilfully disregarding and violating the court's order of August 29, 1956, in a school segregation case. He was sentenced to be confined in some institution to be designated by the Attorney General of the United States for a period of one year, and was admitted to bail pending appeal. He challenges the order on constitutional, jurisdictional and procedural grounds.

The background of the contempt proceeding is important. On April 26, 1952, the district judge dismissed a proceeding against the County Board of Education of Anderson County, Tennessee, for a declaratory judgment and injunction, restraining it from continuing a custom denying colored children rights guaranteed them by the Fourteenth Amendment to the Constitution of the United States. No State statute was involved. *McSwain, et al.*, v. *County Board of Education*, 104 Fed. Supp. 861. On appeal to this court, judgment was reversed and the case remanded to the district court for further proceedings,

in conformity with the decision of the Supreme Court in *Brown, et al.* v. *Board of Education*, 347 U.S. 483. In compliance, the district court issued an injunctional order, requiring the appellees to desegregate the High Schools of Anderson County by the fall term of 1956. The appellees accepted the order, as required by the law of the land, and proceeded to comply with it. Twelve Negroes were enrolled in the Clinton, Tennessee, High School at the beginning of the fall term, without disrupting ordinary school routine and without picketing or violence of any kind.

This was the situation in Clinton when on Saturday, August 25, 1956, the appellant arrived from somewhere in the East. His declared purpose, established cumulatively by many witnesses, was to run the Negroes out of the school or to cause Brittain, its principal, to resign his job, and so to violate the court's segregation order. To achieve that purpose, he organized a movement designed to implement it. On Monday, August 27th, mass picketing began in front of the school and by Wednesday, August 29th, the crowd had grown and become menacing, so that both students and faculty were terrorized, and one Negro pupil had been attacked. When urged to desist, appellant replied that the court order need not be obeyed and stated to Brittain "If you keep this up, there is going to be bloodshed."

On August 29th, the appellees petitioned the court for injunctive relief, alleging that the appellant, in concert with others, had begun the organization of a movement to prevent the petitioners from obeying the desegregation order, of which he had full knowledge, and urging his following to ignore it and to do all they could to impede, obstruct and intimidate the appellees from carrying it out. The court issued an ex parte temporary restraining order, prohibiting the appellant and others from further hindering, obstructing, or in any way interfering with the

carrying out of the court's order and from picketing Clinton High School, either by words, acts, or otherwise, and directing the appellant to appear on the following day in the court at Knoxville to show cause why a preliminary injunction should not issue.

On the same day the restraining order was served upon the appellant and immediately after such service, the appellant made a speech to a crowd of 1,000 to 1,500 people to the effect that although he had been served with the restraining order, it did not mean anything and that the Supreme Court's ruling in the segregation cases was not the law of the land. Thereafter, an order of attachment was issued by the court, charging that appellant's speech was a wilfull violation of the restraining order and constituted criminal contempt. The order of attachment was served and the appellant appeared with counsel before the court, on August 30, 1956. The court explained to him and his attorney that he would hold an immediate hearing on the issue of the preliminary injunction sought by the appellees but that there could be a continuance on the criminal contempt charge, if they desired it. Appellant's counsel, at first, requested time to prepare his defense on the contempt charge but during the hearing on the preliminary injunction changed his mind and, at his express request, the hearing proceeded on both the preliminary injunction and the contempt proceeding. The United States Attorney participated in it, at the request of the court and without objection interrogated witnesses. The court held the restraining order to have been properly issued and that the evidence justified its continuance as a preliminary injunction. The court also held that the appellant had wilfully violated the temporary restraining order; that his conduct was not protected by the First Amendment; and that he was guilty of a criminal contempt. The sentence here challenged was then imposed. On Friday August 30, Saturday August 31st, and Sunday September 1st, violence became rampant in Clinton. A

mob formed, estimated at 3,000 people, with which the local police officials and others deputized to meet the emergency clashed, and, though tear gas was used, the mob could not be controlled. The State Patrol and National Guard were called and, at one point, the Guard was obliged to use fixed bayonets. Finally, the Guard Commander at head of 667 men was able to restore order.

Appellant's challenge to the validity of the sentence is on the ground that the statements made by him, as set forth in the citation and attachment, are protected by the First Amendment of the United States Constitution, guaranteeing freedom of speech; that the procedure followed by the trial court constituted a denial of procedural due process of law under the Fifth Amendment, because the temporary restraining order was not served upon him, so he could not be guilty of violating it; that the contempt citation can not stand, because it was not brought in the name of the United States which is the real party in interest and so the conviction is null and void; that the original defendants having complied with the court's order, the case was thereby closed and appellant could not be guilty of criminal contempt for speaking against it; that the service of the contempt citation was void, because it was served upon the appellant in the courthouse where he appeared in answer to the show cause order; that the procedure constituted an improper use of the Federal police power, since the State police power had not been exhausted; and that the sentence was grossly excessive. Appellant makes no claim that he was illegally denied a trial by jury. No request for a jury trial was made by him, and his counsel conceded in oral argument that appellant was not entitled to one.

The question whether the district court had jurisdiction of the controversy and the power to enforce its order by the injunctive process need give us little trouble. In *Brown v. The Board of Education*, 347 U.S. 483, the Supreme

Court concluded that in the field of public education segregation is a denial of equal protection of the laws. The constitutional principle there decided was implemented by the mandate for decree in *Brown* v. *Board of Education*, 349 U.S. 294, wherein the cases there considered were remanded to the district courts to take such proceedings and enter such orders and decrees consistent with the opinion, as are necessary and proper to admit the parties to the cases to the public schools on a racially nondiscriminatory basis, with all deliberate speed. By the holdings there announced, we were bound in reversing the *McSwain* case and the district court was, likewise, bound to issue its injunctional order, requiring the School Board to desegregate the High Schools of Anderson County. Moreover, in directing this to be done, the district judge acted with all deliberate speed, in conformity with our decision and the decision of the Supreme Court, when he commanded the School Board to desegregate by the fall term of 1956. It would seem that the *Brown* case, its associated cases, and our own judgment in McSwain would be a conclusive response to the appellant's arguments, without further rationalization. There is also available to us, however, the exhaustive and scholarly opinion of Circuit Judge Woodrough, speaking for the Court of Appeals of the Eighth Circuit, in *Brewer* v. *Hoxie School District No. 46*, 238 F. (2d) 91, 98, wherein it was held that the jurisdiction of the Federal Courts and the application of its remedies to protect rights safeguarded by the Constitution is now so well established that no one may question it. The *Brewer* case is completely documented and we have benefitted much from the thoroughness of the research there disclosed.

The right to speak is not absolute and may be regulated to accomplish other legitimate objectives of government. The First Amendment does not confer the right to persuade others to violate the law. *Giboney* v. *Empire Storage Company*, 336 U. S. 490, 502. The speech here enjoined was clearly calculated to cause a violation

of law and speech of that character is not within the protection of the First Amendment, *Dennis* v. *United States*, 341 U. S. 494; *Feiner* v. *New York*, 340 U. S. 315; *Beau Harnais* v. *Illinois*, 343 U. S. 250; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568.

Appellant had urged the crowd to disregard the orders of the court and to continue pressure upon the school officials until Negroes were eliminated from the Clinton High School. This, clearly, was not a mere exposition of ideas. It was advocacy of immediate action to accomplish an illegal result, sought to be avoided by the restraining order. The clear and present danger test, as applied by Judge Learned Hand, and adopted by the Supreme Court in the *Dennis* case, is here met by the mob violence that followed the urgings of the appellant. Danger that calls for the presence of the State Patrol and the National Guard, with the use of bayonets and tear gas, is, we think, within the narrowest limits of the concept and cries aloud for such court action as was here taken.

The contention that the procedure followed by the trial court constituted a denial of procedural due process because the temporary restraining order was not served upon the appellant, wherefore, he could not be guilty of violating it, is simply not applicable to the facts of record. The restraining order was served upon the appellant by the Marshal, who, with his deputy, gave clear and persuasive evidence of its service upon the appellant, the reading to him of the injunctional order, and the delivery to him of the citation, after which the appellant held up the paper and said to the crowd: "The Marshal served a temporary injunction on me and I have to appear over at Knoxville at the Federal Court Building tomorraw at 1 o'clock for a hearing . . . . You are all cordially invited to come over and we will demonstrate . . . . I will be with you folks until every Nigger is run out of the Clinton School." The Marshal's

evidence was corroborated by his deputies and other witnesses. The suggestion of the appellant that the court's observation that it was of the *opinion* that the appellant knew about the restraining order is not a finding of fact, is but a captious play upon words.

The insistence of the appellant that the case was closed when the original defendants had complied with the court's order, so that he could not be guilty of criminal contempt for speaking against it must be rejected as clearly without merit. The Federal Court is always empowered to enforce its decrees by orderly process. The further contention that because the order was served upon the appellant in the courthouse, while he was responding to the order to show cause, requires no citation of authority to vindicate the court's action. The appellant was within the jurisdiction of the court at Knoxville as he was at Clinton and was not brought into it by the attachment. So, with the contention that the procedure followed constituted an improper use of Federal Police power, since the State Police power had not been exhausted, is equally untenable. The Federal Courts are empowered to protect Constitutional federal rights even though State power may equally be so exercised.

The contention that the sentence imposed upon the appellant was excessive is, likewise, rejected. Punishment is not "cruel and unusual," unless it is so greatly disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice, *United States* v. *Weems*, 217 U. S. 349; *United States* v. *Rosenberg*, 195 F. (2d) 583 (C. A. 2), *certiorari denied*, 344 U. S. 838. That is not the case here.

Finally, an injunctional order issued by a court must be obeyed, however, it may seemingly be challenged as invalid. This principle has long been accepted and is crystalized in the classic comment of Mr. Chief Justice Taft in *Howat* v. *Kansas*, 258 U. S. 181, 189, wherein, speaking

for a unanimous court, he said: "It is for the court of first instance to determine the question of the validity of the law and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders, based on its decisions, are to be respected." *United States* v. *United Mine Workers of America*, 330 U. S. 258, 293; *Amalgamated Clothing Workers* v. *Richman Brothers Co.*, 211 F. (2d) 449, 452 (C. A. 6). So only may the dignity of courts be maintained and Constitutional rights be ab initio preserved.

Judgment affirmed.

Order Denying Rehearing

(Filed June 27, 1957)

Upon consideration of a petition by the above-named appellant for a rehearing before the court as constituted at the original hearing and the suggestion that the court hold a hearing en banc, we follow our established practice of denying such hearing unless a petition has been filed a reasonable time prior to the scheduled hearing before a panel of three judges; and upon the consideration of the petition for rehearing by such panel, it is hereby ordered that the petition for rehearing be, and it is hereby,

Denied.

Office-Supreme Court
FILED
AUG 27 1957
JOHN T. FEY, Clerk

No. 315

In the Supreme Court of the United States

OCTOBER TERM, 1957

JOHN KASPER, PETITIONER

v.

D. J. BRITTAIN, JR., J. M. BURKHART, W. B. LEWALLEN, SIDNEY DAVIS, AND WALTER E. FISCHER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 315

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals for the Sixth Circuit (Pet. App. 2a–9a) has not yet been officially reported. The opinions of the District Court for the Eastern District of Tennessee (Appellant's App. 21a–29a; 31a–35a)[1] are also unreported.

[1] The designation "Appellant's App." refers to the petitioner's appendix filed in the Court of Appeals, "Appellees' App." refers to the respondents' appendix in the Court of Appeals, and "Pet. App." refers to the appendix to the petition for certiorari.

JURISDICTION

The judgment of the Court of Appeals was entered on June 1, 1957 (Pet. App. 1a). A petition for rehearing was denied on June 27, 1957 (Pet. App. 9a). The petition for a writ of certiorari was filed on July 26, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTIONS PRESENTED

1. Does the First Amendment bar a District Court from restraining inflammatory speeches intended to incite immediate mob action to frustrate a decree of the District Court ending racial discrimination in a public high school?

2. Does a District Court have jurisdiction to issue orders to restrain activity calculated to frustrate its decree ending racial discrimination in a public high school?

3. Were prejudicial errors committed during petitioner's trial for criminal contempt?

4. Did the District Court abuse its discretion by sentencing petitioner to one year in jail for his criminal contempt?

STATEMENT

The background:—On January 4, 1956, the District Court for the Eastern District of Tennessee issued an order in *McSwain, et al.* v. *Board of Education of Anderson County* (E. D., Tenn., No. 1555),[2] a suit by a group of Negroes for admission to the schools

[2] Respondents Brittain and Burkhart were named in this order; respondents Lewallen and Davis were attorneys for the school board.

of Anderson County, Tennessee, on a non-discriminatory basis, directing that desegregation begin in the high schools of Anderson County by the fall term, 1956 (Appellant's App. 22a–23a). The instant proceedings arise out of measures taken by the District Court to prevent interference with that order.

In obedience to the court's order, respondent Brittain, the principal of Clinton High School, registered several Negro students for the fall term, 1956; and when school opened on Wednesday, August 22, 1956, twelve Negroes and approximately 800 Caucasian students reported without incident (Appellant's App. 23a; Appellees' App. 7b–8b).

On Saturday, August 25, 1956, petitioner arrived in Clinton (Appellant's App. 23a; Appellees' App. 35b). He had been sent by the Seaboard White Citizens Council to see whether picket lines and demonstrations, which he said had been used successfully in Delaware to frustrate desegregation, could be used to coerce Clinton school officials to dismiss the Negro students from the high school (Appellant's App. 23a–24a, 27a–29a; Appellees' App. 15b, 24b, 26b, 29b, 30b, 44b–45b).

On Sunday, August 26th, petitioner met with members of the community to discuss his proposed course of action. The editor of the local paper and others explained to him that the high school had been desegregated in obedience to the District Court's order. Petitioner replied that it was not necessary to obey the court's ruling (Appellees' App. 16b–17b).

When school opened on Monday, August 27th, petitioner appeared on the high school grounds

(Appellees' App. 10b). Picketing and demonstrations around the school began (Appellees' App. 9b). They were to continue throughout the week (Appellees' App. 9b–10b, 20b–21b).

On Tuesday, August 28th, petitioner, at the head of a crowd of sympathizers, called on Principal Brittain and informed him that he should dismiss the Negroes from the school or resign. Mr. Brittain explained that he was acting in obedience to the District Court's order and that, even if he resigned, his successor would be subject to that order. Petitioner was not satisfied with this and told Mr. Brittain: "If you keep this up, there is going to be bloodshed" (Appellees' App. 15b).

On Wednesday morning, August 29th, respondents Lewallen and Davis, who were attorneys for Anderson County in the desegregation suit, met with petitioner in front of the high school to discuss the situation. As they stood in the center of a noisy and increasingly hostile crowd, Mr. Lewallen, speaking as an attorney, carefully explained the desegregation suit to petitioner and told him of the District Court's order. Again, petitioner stated that the order could be disregarded (Appellees' App. 25b–29b).

By August 29, after three days of picketing and demonstrations, the atmosphere in Clinton was pervaded by fear, tension, and anxiety. Demonstrators milled about the town on foot and in automobiles, shouting, honking horns and flaunting signs bearing insulting legends (Appellees' App. 5b, 21b, 25b). Teenagers in a crowd led by petitioner were seen carrying clubs (Appellees' App. 28b). One of the

Negro students had actually been attacked (Appellees' App. 13b–14b). The crowd before the high school had become so threatening that the husbands of women who taught there feared for their safety (Appellees' App. 30b).

The temporary restraining order against petitioner:—On Wednesday, August 29, 1956, respondents petitioned the District Court for injunctive relief. In their verified petition, they alleged that petifioner, with full knowledge of the District Court's desegregation order, had organized a movement to impede, obstruct, and intimidate the defendants in the desegregation suit from complying with the District Court's order, and that petitioner was leading a movement to intimidate parents of both races from sending their children to Clinton High School. A description of the picket lines and crowds which had congregated near the high school was set forth. Respondents prayed for an injunction enjoining petitioner and others from doing any act to obstruct or to impede by intimidation or oppression respondents' efforts to comply with the order of the District Court (Appellant's App. 4a).

On the same day, August 29, the District Court issued an *ex parte* temporary restraining order "prohibiting appellant and others from further hindering, obstructing, or in any way interfering with the carrying out of the aforesaid order of this Court, or from picketing Clinton High School, either by words or acts or otherwise'" (Appellant's App. 9a–11a). It further provided that appellant was to appear on the

following day to show cause why a preliminary injunction should not issue (Appellant's App. 10a).

The temporary restraining order was served on petitioner on the evening of August 29th as he was addressing a crowd of 1,000 to 1,500 persons gathered before the Clinton courthouse. The United States Marshal called petitioner aside and read the restraining order to him. The marshal began to read the petition which accompanied the order but was interrupted when petitioner took the papers and returned to his place before the crowd (Appellees' App. 54b–62b). He thereupon began an impassioned speech to the effect that he had been served with an injunction, that this injunction did not mean anything, and that persons not named in the order should continue to do what they had been doing until the fight was won (Appellant's App. 28a; Appellees' App. 55b; 62b; 66b).

The proceedings in the District Court:—After this speech, respondents immediately applied for an order of attachment charging that petitioner's speech was a willful violation of the restraining order which constituted a criminal contempt (Appellant's App. 15a–17a). The District Court issued an attachment order on August 30, 1956. Petitioner appeared before the court with his counsel on the same day (Appellant's App. 21a).

The court explained to petitioner and his attorney that the hearing on the issuance of the preliminary injunction would be held at that time but that they could have a continuance on the criminal contempt charge if they desired (Appellant's App. 21a–22a;

Appellees' App. 1b–3b). Counsel for petitioner indicated that he would prefer to have time to prepare a defense to the contempt charge and the court proceeded to conduct a hearing on the preliminary injunction (Appellant's App. 22a; Appellees' App. 1b–3b). During this proceeding, counsel for petitioner apparently changed his mind and at his express request the hearing on the issuance of the preliminary injunction and the contempt proceeding were conducted at the same time (Appellant's App. 22a; Appellees' App. 39b–41b). The United States Attorney participated in this hearing, at the request of the District Court, and, without objection by petitioner, interrogated witnesses (Appellees' App. 53b). Jury trial was not requested by petitioner.

At the conclusion of the hearing, the court held that the restraining order had been properly issued, that it did not violate the First Amendment, and that the evidence justified its continuance as a temporary injunction (Appellant's App. 21a–27a). The court also held that petitioner had willfully violated the temporary restraining order, that his conduct was not protected by the First Amendment, and that he was therefore guilty of a criminal contempt as defined by 18 U. S. C. § 401 (3) (Appellant's App. 24a–29a). A sentence of imprisonment for one year was imposed upon him. (Appellant's App. 29a).

By the end of the week, the movement launched by petitioner had gained such momentum that violence became rampant in Clinton (Appellees' App. 74b–88b). A mob estimated at 3,000 people formed (Appellees' App. 77b). Local police officials and persons depu-

tized to meet the emergency clashed with the mob (Appellees' App. 78b–79b), but they were unable to control it even with the use of tear gas (Appellees' App. 78b–79b). Late Saturday, the State Patrol entered the town to restore order, and a National Guard force of 667 men arrived the following day (Appellees' App. 80b–83b). Disorder continued and at one point the Guard had to use fixed bayonets to control the rioters (Appellees' App. 87b). Finally, the National Guard Commander was able to lay down and enforce stringent rules against assembly, and thus to restore order (Appellees' App. 82b–83b, 87b).

After a further hearing before the District Court, on September 6, 1957, the injunction against petitioner was made permanent, his motion for a new trial was overruled, and his bail was fixed at $10,000 (Appellant's App. 31a–34a).

The proceedings in the Court of Appeals.—Petitioner appealed to the Court of Appeals for the Sixth Circuit from his contempt conviction, the order making the preliminary injunction permanent, and the denial of his motion for a new trial. The Court of Appeals affirmed the judgment of the District Court in an opinion which reviewed the entire controversy from the standpoint of petitioner's conviction for contempt. It held that the District Court had jurisdiction to implement and protect its decree ordering desegregation (on the authority of *Brown* v. *Board of Education*, 349 U. S. 294, and *Brewer* v. *Hoxie School District No. 46*, 238 F. 2d 91, 98 (C. A. 8)); that petitioner's speech, which was calculated to cause immediate action in violation of law, was not protected under

the First Amendment (citing *Giboney* v. *Empire Storage Co.*, 336 U. S. 490, 502; *Feiner* v. *New York*, 340 U. S. 315; *Beauharnais* v. *Illinois*, 343 U. S. 250; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568), especially since there was a clear and present danger that the illegal result might be accomplished (citing *Dennis* v. *United States*, 341 U. S. 494). The court rejected as unsupported by the record petitioner's claim that he was not served. It also rejected his argument that the federal court was interfering with state functions by issuing orders to vindicate its own authority. The sentence imposed by the District Court was sustained against petitioner's argument that it constituted a cruel and unusual punishment. Finally, the court below held that an injunction must be obeyed "however it may seemingly be challenged as invalid," citing *United States* v. *United Mine Workers of America*, 330 U. S. 258, 293. A petition for rehearing was denied on June 27, 1957.

ARGUMENT

Despite the dramatic background out of which it arose, this case involves, at bottom, no more than the application of settled principles in the administration of justice. The District Court issued a temporary restraining order, which ultimately was made a permanent injunction, for the purpose of protecting one of its decrees from frustration by the deliberate efforts of petitioner. In wilful disobedience of the court's order, petitioner incited mob action immediately aimed at subverting the court's decree. For this flagrant disobedience of the restraining order, he has

been sentenced, after due notice and hearing, to a term in jail for contempt in accordance with the prevailing usages of law. 18 U. S. C. 401 (3).

While occasions in which a District Court must thus use its inherent powers to enforce its orders are infrequent in our society, they are not unfamiliar to this Court. The facts in this record fall within this familiar pattern of prior law. They do not support petitioner's claim that the First Amendment prevents the District Courts from restraining or punishing calculated attempts to coerce disobedience to their valid decrees; or his claim that the District Court had no jurisdiction to act against him in these circumstances. No conflict with prior decisions of this Court or of other Courts of Appeals is presented. There is no occasion for further review.

1. Petitioner contends that the temporary restraining order, and the permanent injunction which embodies the same language, restrict rights of free speech guaranteed him by the First Amendment. The question which he thus raises involves primarily a factual inquiry into the record of petitioner's activities—a record already carefully reviewed by the Court of Appeals.

By Wednesday, August 29, 1956, the effectiveness of the District Court's decree of January 4, 1956, hung upon the strength of the respondent school officials to resist the intimidation petitioner had organized. They were faced with the threat of mounting disorder in their community and with threats to themselves for refusing to disobey the court's order. They had to consider the safety of the children, both white and

Negro, who were being forced to run through lines of pickets to go to and from school (Appellees' App. 13b–14b, 89b–91b). There was a clear and present danger that, without the aid of the court which had ordered them to desegregate Clinton High School, the school officials might be forced to disobey its order.

On this record, we submit that it is idle to suggest that the First Amendment barred the court from restraining petitioner's efforts to frustrate its desegregation decree. In plain language, petitioner was ordered to desist from "hindering, obstructing, or in anywise interfering" [with the implementation of the District Court's order to the respondent school officials to desegregate the high school in Anderson County] "or from picketing Clinton High School, either by words or acts or otherwise" (Appellant's App. 10a). This careful language restrained only behavior and expression which was deliberately aimed at the frustration of the District Court's decree. Petitioner was barred from exhorting the mob (which he had aroused) to picket, to demonstrate, and to boycott, until school officials subject to the District Court's decree were intimidated into violating it by dismissing the Negro students from Clinton High School. Yet this is what petitioner continued to do.

"The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force." *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 439." *Schenck v. United States*, 249 U. S. 47, 52. Petitioner's activities

in Clinton were, as he frankly stated, for the purpose of organizing demonstrations and boycotts to prevent desegregation in Clinton High School (Appellees' App. 11b, 17b, 35b). Backed by the movement he had organized, his words took on the character of force as strong as any call to strife ever condemned by this Court. His impassioned speech, after he had been served with the restraining order, urging the mob to continue coercing the respondent school officials until the fight was won (Appellees' App. 66b), was precisely the kind of unprotected speech referred to in *Schenck*. Exhorting a mob to a campaign of civil disobedience and of conflict, aimed at obstructing the decree of the court, is no more within First Amendment safeguards than are other direct incitements to racial or religious strife (cf. *Feiner* v. *New York*, 340 U. S. 315; *Beauharnais* v. *Illinois*, 343 U. S. 250; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568). Such behavior, which incites to immediate action aimed at the direct frustration or subversion of the lawful processes of Government, is beyond the limits of free speech recognized in this Court's decisions. Cf. *Dennis* v. *United States*, 341 U. S. 494; *Yates, et al.* v. *United States*, 354 U. S. 298.

The use of the injunctive process to control such expression is a familiar exercise of equity jurisdiction. Injunctions have been used to restrain picketing tainted by violence (*Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, 294–295) or aimed at coercing others to do some illegal act (*International Brotherhood of Teamsters, Local 695* v. *Vogt*, 354 U. S. 284; *Giboney* v. *Empire Storage Co.*, 336

U. S. 490). As the court below noted, "the speech here enjoined was clearly calculated to cause a violation of law * * * (Pet. App. 6a–7a).[1] In the atmosphere of tension which had been largely created by petitioner's efforts, his intemperate language took on the color of violence directly aimed at the obstruction of the District Court's decree. Remarks attacking this Court, which might otherwise be protected (cf. *Pennekamp* v. *Florida*, 328 U. S. 331; *Bridges* v. *California*, 314 U. S. 252), became part and parcel of petitioner's call to his followers to disregard the law until every Negro child was driven from Clinton High School. His denunciations were infected by the "momentum of fear" generated in Clinton by the mob at whose head petitioner had placed himself. In these circumstances, his inflammatory utterances necessarily became subject to restraint. Cf. *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, 294.

2. Petitioner likewise contends that his conviction for contempt and the permanent injunction must fall because the District Court had no jurisdiction of the subject matter or of his person. The grounds upon which he would have this Court review these contentions are not clear from his petition. The record is clear, however, that the District Court was acting within its jurisdiction to protect its decree and that it

[1] Petitioner's complaint that his words are being improperly weighed against the sum total of the activities in Clinton which were hostile to integration will not withstand examination. His words were responsible, in themselves, for a substantial part of the sum total; and, also, his words defying the temporary restraining order must be evaluated in the immediate context in which they were spoken.

had properly acquired personal jurisdiction over the petitioner:

"(a) In fashioning its instructions for the disposition of the desegregation cases in *Brown* v. *Board of Education, et al.*, 347 U. S. 483, 495–496, this Court cautioned the lower courts to retain jurisdiction during the period of transition. 349 U. S. 294, 301. It recognized that difficulties of social and administrative adjustment required a cautious approach attuned to the delicacy of the issues. But it made clear that the 'vitality of these constitutional principles [underlying the admission of children to public schools on a nondiscriminatory basis] cannot be allowed to yield simply because of disagreement with them.' 349 U. S. 294, 300.

The judgments challenged here are simply applications of this Court's directive. The District Court was required, in the case before it, to end discrimination in Clinton High School. Petitioner's activities forced the court to exercise its jurisdiction in aid of this objective by preventing interference with respondents' efforts to eliminate discrimination. There is no color to his contention that the District Court did not have jurisdiction of the general subject matter. *See Brewer* v. *Hoxie School District No. 46*, 238 F. 2d 91 (C. A. 8). Moreover, no subject is more obviously within the jurisdiction of the District Courts than the protection of their own decrees. This is the very essence of the grant of power to the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions * * *." 28 U. S. C. 1651 (a). *See Local Loan Co.* v. *Hunt*, 292

U. S. 234, 239. Without such power this Court's mandate in the *Brown* case, *supra*, would be impossible of implementation. The District Courts might be forced to stand by in impotence while constitutional rights which the courts had tried to vindicate were destroyed by demagogues and mobs. The assumptions as to the equitable power of the District Courts which underlie this Court's ruling in *Brown* demonstrate both the technical and the practical reasons why petitioner's contentions have no merit.[1]

(*b*) Equally without substance is petitioner's assertion that the District Court did not have personal jurisdiction over him. The record plainly shows that he was properly served within the territorial jurisdiction of the District Court. The marshal actually read the restraining order to him. *Supra*, p. 6.

(*c*) Since the District Court thus had jurisdiction of the subject matter and of petitioner's person, he is foreclosed from challenging his contempt conviction upon the ground that the court was exceeding its equitable jurisdiction. *United States* v. *United*

[1] Petitioner also urges this court to review his contention that the District Court did not have jurisdiction of the subject matter because it was attempting to extend federal jurisdiction into an area reserved to the police power of the states (Pet. 14). But the language of the District Court's order shows plainly that it restrained only deliberate interference with its desegregation decree. Further, a District Court need not await state police action to protect a federal function from unlawful interference. *In re Debs*, 158 U. S. 564.

We pass over as frivolous petitioner's suggestion that *Brown* v. *Board of Education, et al.*, 347 U. S. 483, is in error because the 14th Amendment may be enforced only by Congress (Pet. 16).

Mine Workers, 330 U. S. 293; *United States* v. *Shipp,* 203 U. S. 563; *Howat* v. *Kansas,* 258 U. S. 181, 189. And, in the light of the considerations set forth above, there is also no basis for further review of his contention that the District Court could not issue a permanent injunction to restrain him from interfering with its desegregation decree.

3. Petitioner's challenge to the procedures in his case is both unclear and insubstantial. He finds an issue in the fact that he was not served with a copy of the decree he was restrained from obstructing. However, the restraining order contained a sufficient description of the court's decree to make it clear to petitioner that by organizing a campaign to reestablish discrimination in Clinton High School he was campaigning to compel a violation of the District Court's order ending such discrimination (Appellant's App. 9a–11a). Further, the record shows that on three separate occasions prior to the issuance of the temporary restraining order the decree ending discrimination in Clinton High School was brought to petitioner's attention—on one such occasion it was even explained to him by an attorney for the school board (Appellees' App. 11b, 17b, 28b–29b). The District Court found on ample evidence that petitioner had actual notice of the desegregation decree. In these circumstances, there was no prejudice.

Nor is a basis for review presented by the fact that the proceedings against petitioner were initiated by persons bound by the District Court's desegregation decree, rather than by the Federal Government. Private persons have frequently initiated criminal con-

tempt proceedings. *Union Tool Co.* v. *Wilson*, 259 U. S. 107; *Matter of Christenson Engineering Co.*, 194 U. S. 458; *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324. Equally unsubstantial is his objection to the appearance, in the Court of Appeals, of attorneys for the Government. Though criminal contempt may be prosecuted by private persons, it is also an offense against the United States (Pet. 13). The United States Attorney participated in the contempt proceedings at the request of the District Court without objection by petitioner (Appellees' App. 53b).

Petitioner complains that he did not have an adequate opportunity to prepare his defense.[5] The record shows, however, that he was offered a continuance on the contempt charge (Appellees' App. 1b). A hearing on whether a preliminary injunction should issue went forward upon the understanding that the contempt proceeding would take place at a later time. But after a further discussion with the District Court, petitioner expressly requested the court to hear the criminal contempt proceeding and the preliminary injunction motion together (Appellees' App. 40b–41b). *Supra*, pp. 6–7. In the face of this history, there is nothing to the point that the matter should have been continued. Petitioner was fully apprised by the order of attachment, of the criminal nature of the charge

[5] Insofar as this complaint is addressed to the court's denial of a continuance on the preliminary injunction hearing, it is moot since the preliminary injunction was superseded by the permanent injunction issued after a further hearing on September 6, 1956 (Appellant's App. 31a).

against him and the specific allegations on which it was based (Appellant's App. 15a). He was offered an adequate opportunity to prepare his defense and to present witnesses in his own behalf (Appellees' App. 34b, 97b). Having requested the procedure which was followed, he cannot complain now that the civil and criminal aspects of his case were tried together. Cf. *United States* v. *United Mine Workers*, 330 U. S. 258, 300.[6]

4. The sentence of confinement imposed upon petitioner was an appropriate exercise of the district judge's discretion in the light of petitioner's "willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future." *United States* v. *United Mine Workers*, 330 U. S. 258, 303. Sentences of equal or greater severity have been affirmed. *E. g.*, *Hill* v. *United States ex rel. Weiner*, 300 U. S. 105; *United States* v. *Thompson*, 214 F. 2d 545 (C. A. 2), certiorari denied, 348 U. S. 841; *United States* v. *Ledever*, 140 F. 2d 136 (C. A. 7), certiorari denied, 322 U. S. 734; *Creekmore* v. *United States*, 237 Fed. 743 (C. A. 8), certiorari denied, 242 U. S. 646; *Warring* v. *Huff*, 122 F. 2d 641 (C. A. D. C.) certiorari denied, 314 U. S. 678. Disrespect for the due processes of the law had been a

[6] Petitioner did not demand a jury trial in the District Court, and apparently concedes that there is no statute authorizing such a trial on the averments contained in the order of attachment (Pet. 10).

central theme of petitioner's campaign. His harangue in defiance of the temporary restraining order was aimed at furthering this purpose. In these circumstances, we submit that, far from abusing its discretion, the District Court showed restraint. Considering his conduct and its consequences, petitioner's sentence of one year is not an undue sanction to vindicate the public interest in obedience to lawful procedures.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1957.

Office - Supreme Court, U.S.
FILED
NOV 8 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

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v.

D. J. BRITTAIN, JR., J. M. BURKHART, W. B. LEWALLEN, SIDNEY DAVIS, and WALTER E. FISCHER, *Appellees*.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Since the issues in this case were presented to this Court and the lower courts there have been developments which seem to clearly indicate the desirability, if not the necessity, of this Court clarifying the confusion which exists regarding the enforcement procedures to be followed as a result of the decision of this Court in *Brown* v. *Board of Education*, 347 U.S. 483.

The Brown case was bottomed on the 14th Amendment and that amendment also provides:

> "The Congress shall have power to enforce by appropriate legislation the provisions of this Article."

Since the Congress has not implemented the 14th Amendment with respect to integrating the state supported public schools, the procedures followed in the instant case and other such cases is projecting the Federal Courts into a legal wilderness which has the courts indulging in judicial legislation.

The 15th Amendment conferring the right to vote contains the same provision as the 14th Amendment in that its enforcement shall be by appropriate legislation. The last Congress, after extensive hearings and debate passed the so-called "Civil Rights Bill" providing injunctive procedures to protect the right to vote. Until the Congress acts to provide enforcement legislation in respect to integrating state supported public schools the dilemma will only be increased as time goes on. If the Federal Courts have the injunctive power utilized in the instant case, then there was no necessity for such extensive hearings, debate and legislative action as the last Congress rendered respecting the 15th Amendment.

Clearly the Congress did not waste all of this time on moot procedures respecting the protection of the right to vote, and this clearly points out the necessity of enforcement legislation of a corresponding type under the 14th Amendment to give the Federal Courts the injunctive power that was exercised in this case. This same injunction was used to bring 18 defendants into the Federal District Court in Knoxville charged with conspiracy to violate the injunction issued in this case, and 7 of them were convicted, including this petitioner. Since other federal courts (Nashville and Little Rock) are using this injunctive procedure to enforce integration, the Courts will feel the impact more and more

as the judicial legislative process broadens and surely it will.

The Courts have only such jurisdiction as conferred under the Constitution and acts of Congress and since both are dormant on enforcement of integration of state supported public schools, the illegality broadens and the dilemma increases with time.

The Supreme Court, in refusing to grant a review of the conviction of John Kasper, is refusing to review the question of whether action by a private individual against the rights of Negroes, which is not subject to the cognizance of the Federal courts, becomes subject to federal cognizance by the introduction into the picture of a court order on desegregation of schools. It is a new question because it runs contrary to decisions saying acts of private individuals cannot deprive Negroes of rights conferred by the Fourteenth Amendment; and because no private persons have ever been jailed for acts against Negroes allegedly interfering with the carrying out of court orders grounded on the Fourteenth Amendment. It is a tremendously significant question in terms of our political arrangements under the United States Constitution, because it raises the issue of whether Federal authority under the Fourteenth Amendment shall be extended from cognizance over acts of public officials to cognizance over acts of private individuals.

It is also a question raising grave issues of liberty and justice. John Kasper has been sentenced to a Federal jail for one year. Should one year of his life and liberty be taken away without the Supreme Court answering this new and significant question of whether Federal authority grounded on the Fourteenth Amend-

ment extends to the acts of private individuals against Negroes. If Federal authority does not extend to the acts of private individuals in this case, then the conviction and jailing of John Kasper will have deprived him of rights of free speech. He stands convicted for a speech in front of a court house urging private citizens not to allow integration to take place at Clinton High School. The Supreme Court has ever been alert to protect the rights and liberties of convicted criminals, to see that they are given the last right, even of a merely procedural and formal nature, which is due a person no matter how heinous the crimes, even communists advocating the overthrow of our government by force and violence. Is there some reason why it should do less for the petitioner?

The injunction in this case is so broadly worded that it is void on its face because it cuts across the 1st Amendment of the Constitution. Its injunctive clause provides:

> "It is ordered and decreed by the Court that the aforementioned persons, their agents, servants, representatives, attorneys, and all other persons who are acting or may act in concert with them be and they hereby are enjoined and prohibited from further hindering, obstructing, or in any wise interfering with the carrying out of the aforesaid order of this Court, or from picketing Clinton High School, either by words or acts or otherwise."

The broad injunction issued in this case has been used in a conspiracy case in Knoxville and similar broadly worded injunctions have been issued in the Federal District Courts in Nashville and Little Rock.

The "freedom of speech" issue, we respectfully submit, needs to be re-examined in the light of recent decisions of this Court.

This Court on June 17, 1957, decided the case of *Yates et al* v. *United States*, 77 S. Ct. 1064, and the issues in that case were whether or not it was a violation of the Smith Act "to advocate and teach the duty and necessity of overthrowing the government of the United States by force and violence and (2) to organize as the communists party of the United States, a society of persons who so advocate and teach, all with the intent of causing the overthrow of the Government by force and violence as speedily as circumstances would permit."

This Court meticulously examined the issues raised and the evidence (page 1081). The Court supported the right of persons in that case to advocate the overthrow of our government by force and violence so long as it clearly remained in the realm of advocacy. The Court stated (page 1083):

> Moreover, apart from the inadequacy of the evidence to show, at best, more than the abstract advocacy and teaching of forcible overthrow by the Party, it is difficult to perceive how the requisite specific intent to accomplish such overthrow could be deemed proved by a showing of mere membership, or the holding of office in the Communist Party. We therefore think that as to these petitioners the evidence was entirely too meagre to justify putting them to a new trial, and that their acquittal should be ordered.

The Petitioner would respectfully urge the Court to examine the advocacy of the Petitioner in this case. He advocated re-segregating Clinton High School. He

did not advocate violence at any time and he was not involved in any violence. The subject matter of his speech is the same as all segregationists believe in, namely, separate schools for the white and colored children. The colored children remained in school continuously and were not molested.

When the Yates case is considered as a criterion for the instant case in relation to "freedom of speech" the significance pales by comparison, hence, so many cryptic comments regarding segregationists' constitutional rights as compared to communists'.

In the Knoxville conspiracy case, six of the persons convicted were not parties to the injunction in any way, and were charged with notice of it because of radio, TV, and newspapers carrying the news concerning its issuance, etc. In other words, all people residing in the area covered by the District Court at Knoxville are charged with notice of the injunction and are bound by the injunction. That is the manner in which the injunction issued in this case is being used. That pattern will no doubt spread to other jurisdictions unless this Court intervenes.

The trials and tribulations of this social revolution are terrific at best, but it is supremely important for this Court to zealously protect the constitutional rights of both factions because that is the only sure way to keep it peaceful. Under the present trend, just a small amount of realism makes one realize matters will get much worse before they get better. Federal troops are believed to be in Little Rock illegally. Never before in our history has "Equal justice under law" been so meaningful and so fervently desired.

Vital constitutional issues in this case are left undecided and others decided, erroneously, and if the

Court would entertain an appeal in this case where all of the issues incident to implementation of the decision of this Court in the Brown case are involved, it would greatly alleviate the dilemma which now exists, because many learned lawyers and judges feel the Federal Courts are functioning in an illegal and unconstitutional realm. A full review in this case would give the Court the opportunity to give the reasons why the Federal Courts have the jurisdiction it is exercising, and if this Court would find there is merit in the points urged by petitioner, then the quicker the errors are corrected, the better.

CONCLUSION

Petitioner submits that this is an ideal case to set down the "ground rules" for the guidance of the lower courts in the rough terrain that lies ahead in this field, even when constitutional rights are protected. The process will be many times more difficult if constitutional rights are "plowed under" in the process. In this area where the hearts and minds of honest men differ, obedience to law is a compelling force if people believe "due process of law" is being followed. Petitioner urges the Court to reconsider its denial of the petition for certiorari and to grant the writ as prayed for.

Respectfully submitted,

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Dated: November 8, 1957

Certificate

I hereby certify that the foregoing petition is presented in good faith and not for purposes of delay, and is restricted to grounds specified in Rule 58 of the Rules of this Court.

November 8, 1957

J. Benjamin Simmons,
Attorney for Petitioner.